SUPREME COURT OF THE UNITED STATES.

No. ~~8~~ 6

FRANCIS WEST ET AL., APPELLANTS,

VERSUS

WALTER BRASHEAR.

ON APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF KENTUCKY.

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To Walter Brashear:

Whereas an appeal hath been prayed by Francis West and Henry Nixon, surviving executors, with Thomas M. Willing, who were executors of Henry Nixon, to the Supreme Court of the United States, at the city of Washington, the present seat of the National Government, to reverse a decree of the seventh circuit court of the United States in and for the Kentucky dis-

trict, rendered at the May term, 1825, wherein the said Walter Brashear was complainant, and the said Francis West, &c., defendants:

These therefore are to cite and command you that you be and appear in the Supreme Court, in Washington city, on the second Monday in January next, and then and there to be heard, if any thing you have to say, upon the said appeal.

Witness my hand as Judge of the district of Kentucky, and one of the Judges of the seventh circuit court of the United States in and for the Kentucky district, this 26th day of December, 1828.

JOHN BOYLE.

Pleas before the honorable Robert Trimble, one of the Judges of the seventh circuit court of the United States of America in and for the district of Kentucky, held at the Capitol, in the town of Frankfort, at the May term of the said court, in the year of our Lord one thousand eight hundred and twenty-five.

Be it remembered, that heretofore, to wit, on the 25th day of May, in the year 1815, came Walter Brashear into the clerk's office of the court aforesaid, and filed the following bill against Francis West, &c., to wit:

To the honorable the Judges of the circuit court of the United States for the seventh circuit, composed of the district and State of Kentucky, in chancery sitting:

Humbly complaining, sheweth unto your honors, your orator, Walter Brashear, a citizen of the State of Kentucky, that some time about the day of your orator being then, as he has since continued to be, a citizen of the State of Kentucky, executed his bonds or notes in the city of Philadelphia, and State of Pennsylvania, to a certain Francis West, of said city, whom your orator prays may be made a defendant to this bill, which said bonds or notes the said West afterwards assigned to a certain John Nixon, of said city, as collateral security for some debts which he then owed to said Nixon. That said Nixon afterwards departed this life, first appointing Thomas Willing and Henry Nixon, of said city, his executors, whom your orator prays may be also made defendants to this bill. That about the time said West assigned the said bonds or notes to said John Nixon, said West conveyed all his estate, real, personal, and mixed, to John Lapseley, Samuel Mifflin, and Henry Nixon, of said city, in trust, for the payment of his debts. That some time after, about the day of 18 , your orator consigned, from his residence in Kentucky, to a certain James Latimer, a merchant of said city, a considerable quantity of ginseng, and authorized him to make sale of the same on the best possible terms, your orator intending to appropriate the proceeds of sale towards the payment of his debts in said city. That some time after, about the day of March, 1809, the said Latimer sold the said ginseng for about the sum of eleven thousand and five hundred dollars, the said Latimer holding at the same time in his hands the proceeds of another parcel of ginseng belonging to your orator, amounting to about the sum of four hundred and fifty dollars. Your orator further states, that about the day of the said West received, on account of your orator, from a certain William Bush, of said city, one hundred and twenty dollars, or thereabouts, which sum the said West has yet in his hands. That some time about the day of 180 , your orator became special bail for said West

in a suit brought by a certain George Anderson, (since dead,) of the town of Lexington, and State of Kentucky, in the Fayette circuit court of said State. That the said Anderson prosecuted the said suit to judgment, and afterwards, on said judgment, by virtue of scire facias, obtained judgment against your orator, and did actually issue an execution thereon, when your orator, to save his property from an exposure and sacrifice at public sale, settled the same with said Anderson, on the 28th day of October, 1810, amounting, with interest and costs of suit, to the sum of three thousand and seventy-seven dollars and thirty-three cents, as will more fully appear by said Anderson's receipt, herewith filed, and prayed to be referred to. Your orator further states, that notwithstanding the said executors of John Nixon aforesaid well knew that when your orator executed the bonds and notes first herein before mentioned, your orator resided in Kentucky, and that their testator and said West had perfect knowledge of the same, yet the said executor nevertheless proceeded to sue out one or more attachments in one of the courts holden in said city of Philadelphia, against the said Latimer and your orator, to subject the funds in said Latimer's hands, belonging to your orator, to the payment of the said bonds or notes, whereby the said funds were not only tied up in the hands of said Latimer, but he, said Latimer, was forbid, by the operation of law, or by the order of court from which the attachments emanated, to pay the same or any part thereof to your orator or to his order. Your orator further states, that the said John Lapseley, Samuel Mifflin, and Henry Nixon, trustees of said West aforesaid, (whom your orator prays may be made defendants hereto,) in like manner sued out an attachment from the same or some other court holden in the city of Philadelphia, against Latimer and your orator, on an open account, amounting to about the sum of nineteen hundred dollars, contracted with said West, in the said city, whilst your orator resided in Kentucky, the said West and his trustee possessing a full knowledge thereof, to subject in like manner the funds of your orator in said Latimer's hands to the payment of said account, whereby the said funds were not only tied up in the hands of said Latimer, but he, the said Latimer, was, by the operation of law, or by order of court from whence the attachments emanated, forbid to pay the same or any part thereof to your orator or to his order. Your orator charges, first, that at the time the said funds were tied up as aforesaid, the said Latimer was not only solvent, but in flourishing circumstances, and was ready and willing to pay the same over to your orator or to his order, and would have done so had he not have been precluded by said attachments. Secondly, that the said Latimer continued for some time after said attachments sued out, to be in like circumstances, and that had not the said West and his trustees, and the said executors of John Nixon, deceased, procrastinated the said suits, each of them respectively contending against the other, the money, or the proceeds of said ginseng, might have been forced out of the hands of said Latimer. Thirdly, that by the obstinacy of one or all of the said defendants, the said suits against Latimer and your orator were continued until about the day of when, from the casualties of commerce and other misfortunes of trade, the said Latimer became insolvent and unable to pay his debts, by reason whereof the funds as aforesaid, belonging to your orator, were totally lost. Fourthly, that the said Latimer, soon after his failure, departed for Europe, in some part of which continent your orator is informed he still resides, and in insolvent circumstances. Fifthly, that, by the laws of Pennsylvania, the said West, the said

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executors, and the said trustees, made themselves responsible to your orator, by suing out the said attachment against your orator and said Latimer, for any loss sustained by your orator in consequence of the failure of said Latimer, and that, by the same laws, they are further responsible to your orator for any loss he may incur by the said failure, by reason of the said bonds and notes being executed to said West, in the city of Philadelphia, the said West and the rest of the parties possessing a perfect knowledge that your orator at that time resided in Kentucky, where he has ever since continued to reside, and that he had been for several years trading between Kentucky and said city, as they knew; and your orator is advised that under these circumstances the attachments, although they tied up your orator's funds in the hands of said Latimer, were illegal at their commencement. Your orator further states, that the said Thomas Willing and Henry Nixon, executors as aforesaid, finding that, by the insolvency of said Latimer, no money was to be obtained by them on their said attachments, have transferred the said bonds and notes to the said West, who, without allowing your orator any credit for the losses sustained by reason of the said attachments, or for the money which he received on your orator's account from Bush, or for the amount settled as aforesaid as his special bail to Anderson, has brought suit against your orator on the said bonds and notes in this honorable court, on the common law side thereof, and at the last term obtained judgments, and threatens to harass your orator, by execution against his person and property, notwithstanding he, the said West, well knows that, if the matter contained in this bill was fully examined and inquired into, and a balance struck on suitable principles, that he, the said West, and the executors and trustees, would fall considerably in debt to your orator; all such actings and doings of the said West, &c., are contrary to equity and good conscience. In tender consideration whereof, and for as much as your orator is relievable only in equity, where hardships are relieved against, frauds redressed, and men compelled to do equity to each other, to the end that the said Francis West and John Lapseley, Samuel Mifflin and Henry Nixon, trustees of said West, and Thomas Willing and Henry Nixon, executors of John Nixon, deceased, may be made defendants hereto, and upon their corporal oaths true and perfect answer make to all and singular the premises, as fully as if the same were herein repeated by way of interrogatory; that the said West may be compelled to allow your orator credit as herein set forth, together with the amount of losses sustained by reason of the attachments before set forth, and the subsequent insolvency of Latimer, and that the said trustees and executors may be compelled to compensate your orator for the losses he has sustained by said attachments and the insolvency of Latimer, and that, in the mean time, until the matters herein contained can be fully heard by this honorable court, may it please your honors to grant the writ of injunction, restraining, &c., and the writ of subpœna, &c., together with such other and further relief as to equity may seem proper, and your orator will ever pray, &c.

MAY TERM, 1824.

Sworn to in open court by Walter Brashear.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

I release all error at law. WALTER BRASHEAR.

Papers referred to in the foregoing bill, to wit:

LEXINGTON, KENTUCKY, *October* 22, 1810.

Then received of Walter Brashear, as special bail of Francis West, of Philadelphia, in a suit, being an action on the case lately depending in the Fayette circuit court, in which I was plaintiff, and said West was defendant, and in which I recovered a judgment for five thousand one hundred and ninety-eight dollars, which, from a remitter, was to be discharged by the sum of four thousand dollars and costs, and on which judgment, by virtue of a sci. fa., judgment was recovered against said Brashear as special bail for said sum and costs, &c. I say received by me of said Brashear the sum of three thousand and seventy-seven dollars thirty-three cents, being in full satisfaction of an execution issued against said Brashear. Witness my hand and seal, the day and date above.

GEO. ANDERSON. [SEAL.]

Teste, W. MACBEAN.

Upon which bill in chancery the following subpœna was issued, to wit, with an injunction:

The United States of America to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Francis West, Thomas Willing, and Henry Nixon, executors of John Nixon, deceased, John Lapseley, Samuel Mifflin, and Henry Nixon, trustees of Francis West, citizens of the State of Pennsylvania, to appear before the Judges of our seventh circuit court of the United States in and for the Kentucky district, at the Capitol, in Frankfort, on the second Monday in October next, to answer a bill in chancery exhibited against them by Walter Brashear, a citizen of the State of Kentucky, and this they shall in no wise omit, under the penalty of four hundred dollars, and have then this writ. In testimony whereof, John Marshall, Esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 24th day of May, 1815, and of our independence the 39th.

Attest, JNO. H. HANNA, *C. C. C. K. D.* [L. S.]

Marshal's return, to wit: No inhabitants of the district of Kentucky.

CHAPMAN COLEMAN, *D. M.*
For Robert Crockett, M. D. K.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of December, and year 1815, came the complainant, by his counsel, and on his motion it is ruled, that unless the defendants do appear here on or before the next rule day, and answer the complainant's bill, the same will be taken for confessed against them, and the cause set for hearing at the next term.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of February, and year 1816, until which time this cause was continued on the rules.

And afterwards, to wit, at rules held as aforesaid, came the complainant, by his counsel, and the defendants still failing to appear and answer the complainant's bill, though ruled so to do, it is ruled that the same be taken

pro confesso against them, and the cause be set for hearing at the next term of this court.

And afterwards, to wit, at rules held as aforesaid, in the month of March, and year last aforesaid, came the complainant, by his counsel, and gave the defendants a rule for hearing herein.

And afterwards, to wit, at rules held as aforesaid, in the month of April, and year last aforesaid, came the complainant, by his counsel, and set this cause for hearing at the next term.

And afterwards, to wit, at May term, 1817, came the complainant, by his counsel, and it appearing to the satisfaction of the court that the defendant is no inhabitant of this district, on motion of the said complainant, it is ordered that the said defendants appear here on the first day of the next November term, and shew cause, if any they have, why the complainant's bill against them should not be taken for confessed, and that a copy of this order be inserted in the for twelve weeks successively.

And afterwards, to wit, at the November term of the court aforesaid, came the defendants aforesaid, by their attorney, and on his motion, it is ordered that the rule taking the complainant's bill for confessed be set aside, and they have leave to file their answers herein, which was done accordingly; which answers are as follows, to wit:

The joint answers of Henry Nixon and Thomas Wayne Willing, executors of the last will and testament of John Nixon, deceased, to the bill of complaint of Walter Brashear, a citizen of the State of Kentucky, filed in the circuit court of the United States for the seventh circuit, composed of the district and State of Kentucky, in chancery sitting, in a certain cause there depending, wherein the said Walter Brashear is complainant, and these respondents, together with a certain Francis West, and John Lapseley, and Samuel Mifflin, are defendants. The said Henry Nixon and Thomas Wayne Willing, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exceptions to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or to so much thereof as materially concerns them to answer unto, they answer and say, that they admit that the said Walter Brashear, being then, they believed, as he has since continued to be, a citizen of the State of Kentucky, executed two notes of hand, in the city of Philadelphia, and State of Pennsylvania, to a certain Francis West, of the said city, bearing date the 28th day of February, in the year of our Lord 1807, and payable at fifteen months after date; one of them for three thousand five hundred and twenty-seven dollars and eighty-one cents, and the other for three thousand five hundred and twenty-seven dollars and eighty-two cents, which said notes became due and payable on the 28th day of May, in the year of our Lord 1808, in the city of Philadelphia; and these defendants admit that the said notes were, soon after their date, endorsed and delivered over by Francis West to the said John Nixon, to secure a debt owing by the said Francis to the said John; and that the said John Nixon departed this life on the 31st day of December, 1808, having, by his last will and testament, appointed these defendants executors thereof. And these defendants further admit, that shortly after the endorsement and delivery of the above mentioned notes to John Nixon by Francis West, on or about the first day of April, eighteen hundred and seven, he assigned all his effects, real, personal, and mixed, to Samuel Mifflin, John Lapseley, and Henry Nixon, all of the city of Philadelphia, in trust, for the

benefit of his creditors; and these defendants have heard and believe that the complainant consigned, from Kentucky, in the year 1808 or 1809, a considerable quantity of ginseng to James Latimer, merchant of Philadelphia, for sale, but whether any or what instructions were given as to the terms of sale, or what was the intention of the complainant as to the appropriation of the proceeds, these defendants know not, and cannot say. And these defendants, further answering, say, that they have understood and admit that the said James Latimer sold the said ginseng, and they have been informed and believe that when the proceeds thereof was credited by him to the complainant in account, there remained a balance of four thousand nine hundred and eighty-five dollars and twenty-three cents, or thereabouts, due by him to the complainant; and these defendants neither know nor have heard of any other ginseng consigned by the complainant to the said Latimer, nor of the proceeds of any other which came to his hands; and these defendants have no knowledge of any moneys received by Francis West, on account of the complainant, from William Bush, nor whether the complainant became special bail for said West in the suit stated in the complainant's bill; nor whether the proceedings in the said suit, as set forth by the complainant, did or did not take place, nor whether the settlement with and payment of money to Anderson, who is said to have been the plaintiff in said suit, have or have not actually happened; to all which matters these defendants are entire strangers; nor do they admit that they can in any manner affect the right of the testator or of themselves as bona fide endorser and holder of the notes of hand before mentioned. And these defendants, further answering, say, that true it is that on or about the day of in the year of our Lord 1809, a writ of foreign attachment was sued out in the name of said West, by Samuel Mifflin and John Lapseley, two of his assignees, without the knowledge and consent of either of these defendants, which writ was returnable to the June term, in the same year, of the court of common pleas of the city of Philadelphia, against the complainant, which was served upon the said James Latimer, who was summoned as garnishee of the complainant for a balance of account due and owing by him to the said Francis West, and amounting to about two thousand dollars, as they have understood and believe, and these defendants have requested the complainant to pay the amount of the said notes of hand, to which request no attention was paid by him; hearing accidentally of the attachment last mentioned, and that James Latimer had effects of the complainant in his hands, they likewise, on or about the day of in the year of our Lord 1809, sued out a writ of foreign attachment in the same court, returnable to the December term, in the same year, of the said court, and caused the same to be served upon the said James Latimer, who was summoned as garnishee of the complainant for the amount due upon the said notes of hand, as by the laws of Pennsylvania they were advised and believed they had a right to do, the complainant being out of the jurisdiction of the State of Pennsylvania and not an inhabitant thereof; and these defendants annex hereto a certified copy of the proceedings in the said suit last mentioned, taken from the record thereof, which they pray may be received as part of their answer. And these defendants, further answering, say, the proceedings in said attachment were carried on with as much despatch as the law would admit, without any voluntary delay on their part, and that in the mean while they requested the complainant, verbally and by a letter, to direct Mr. Latimer to apply the balance in his hands to the satisfaction of the debt due to the plain-

tiff in the attachment first mentioned in the first instance, and the residue to the discharge of the said notes of hand held by these defendants, but the complainant paid no attention to the said request, and neglected, as these defendants aver and believe, to give any such directions to the said Latimer. And these defendants, further answering, do not admit, at the time they caused the writ of attachment to be issued, the said James Latimer was insolvent, much less in flourishing circumstances; on the contrary, it was owing to the doubts they entertained of his ability to meet his engagements, that they were urgent in their endeavors to prevail upon the complainant to give directions to said James Latimer to pay over the funds in his hands belonging to the complainant, in satisfaction of the demands of the assignees of the said Francis West and these defendants, for which the attachments had been laid as aforesaid, and also to induce the said James Latimer to appropriate the said funds to these purposes; these defendants annex hereto copies of certain letters which were written by them and sent to the complainant, bearing date, respectively, the 4th of November, 1809, the 2d of January, 1812, also a copy of a letter written by them and sent to said Latimer, dated the 24th of June, 1811, all which they pray may be received as a part of their answer. And they aver that, in conversations with the complainant, when he was on a visit to Philadelphia, in the latter part of the year 1811, and with the said James Latimer, about the time of their writing the said letter to him, they urged that such an appropriation should be made of the funds in his hands, but their applications were received in silence by the complainant, and were refused by the said Latimer; and these defendants also annex copies of two letters written and sent by them to said Francis West, and to Messrs. Lapseley and Mifflin, his acting assignees in that behalf, the former dated on the 28th of January, 1810, and the latter on the 7th of March following, showing the anxiety of these defendants to accelerate, as much as possible, the getting the funds out of the hands of Mr. Latimer, in which however they were unable to succeed; and they pray that the said copies of letters last mentioned may be received as the former. And these defendants cannot nor do not admit that the said Latimer, at the time of laying the said attachments by them, was ready and willing to pay the funds in his hands belonging to the complainant to him or to his order, or that he would have done so but for the said attachment, nor that the fact is at all material. And these defendants, further answering, say, they believe the circumstances of the said James Latimer, after the laying of the said attachments, gradually worse and worse, and they expressly deny that their said suit was procrastinated; on the contrary, they aver that it was carried on with all due diligence, and with as much despatch as the laws of Pennsylvania and the practice of the courts admitted; and that when it had proceeded to judgment, measures were to be taken to compel the said Latimer to account for the funds in his hands, he failed, and on the 29th of August, 1811, made an assignment of his property, which was insufficient to pay his preferred, and therefore left nothing for his general creditors, of whom the complainant was declared to be one. And these defendants also deny that they had any contention whatever with the said West, or his assignees, in relation to the attachment laid in his name, but, on the contrary, they always admitted that it was entitled to priority over the suit instituted by themselves, being prior in date. And these defendants, further answering, say, they believe the said Latimer did, some time after executing said assignment, embark on a voyage to , whence he returned, and is now

residing in , in what circumstances these defendants say . And these defendants deny that, by the laws of Pennsylvania, they have made themselves responsible to the complainant by suing out the said attachment against him and the said Latimer, or otherwise however for any loss sustained by the complainant in consequence of the failure of the said Latimer. And they deny that the said attachment was illegal, on the contrary, averring that they are advised and believe that the proceedings at the commencement of the said attachment and throughout were strictly according to law; that the complainant was, soon after the issuing of the writ, informed thereof by these defendants, and had a fair opportunity to avail himself of illegality or irregularity, if any had existed in any part of the proceedings, or might, according to the laws of the State, by giving bail to the action, have dissolved the attachment altogether, and placed his funds entirely at his own disposal, in the same manner as if the said attachment had never been issued. And the defendants, further answering, say, that they deny they have transferred the said notes, or either of them, to the said West, but they admit that they caused suits to be brought for the recovery thereof against the complainant, and hope to succeed therein, that the proceeds may be applied to the discharge of a large balance due from the said West to them in right of their testator, for securing which the said notes were endorsed and delivered over to him as they have already stated. Without that there is any other matter or thing in the complainant's said bill of complaint contained, material or effectual for these defendants to make answer unto, and not herein and hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants.

HENRY NIXON,
THOMAS W. WILLING.

Thomas Wayne Willing and Henry Nixon, being sworn according to law, declare and say, that what is contained in this their answer to the bill of complaint of Walter Brashear, as far as concerns their own acts and deeds, is true of their own knowledge, and that what relates to the act and deed of any other person or persons they believe to be true. Sworn to November, 1817, before me, Bushrod Washington, one of the Associate Justices of the Supreme Court of the United States.

BUSHROD WASHINGTON.

Pleas at Philadelphia, before the honorable Jacob Rush, Esq., President, and his associates, Judges of the court of common pleas of the county of Philadelphia, of the term of December, in the year of our Lord one thousand eight hundred and nine.

Among other things, it is thus continued:

HENRY NIXON and THOMAS M. WILLING, executors of the will of John Nixon, deceased, who was endorsee of Francis West, *vs.* WALTER BRASHEAR.

Be it remembered, that heretofore, to wit, on the ninth day of October, in the year of our Lord one thousand eight hundred and nine, the said plaintiffs, by William Lewis, Esq., their attorney, sued forth out of the said court the writ of the Commonwealth of Pennsylvania of foreign attachment, to the sheriff of Philadelphia county directed, in the words and of the tenor following, to wit:

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PHILADELPHIA COUNTY, sct.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you to attach Walter Brashear, late of your county, yeoman, by all and singular his goods, chattels, rights, and credits, in whose hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges at Philadelphia, at our county court of common pleas, there to be held the first Monday of December next, to answer Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, in a plea of trespass on the case, &c.; have you then there this writ. Witness Jacob Rush, Esq., at Philadelphia, the twenty-third day of September, in the year of our Lord one thousand eight hundred and nine.

FRED. WALBERT. [L. S.]

And at which said first Monday of December, in the year of our Lord one thousand eight hundred and nine, the return day of the before recited writ, came into court here the said plaintiffs, by their attorney, and the sheriff of the county aforesaid, to wit, William T. Donaldson, Esq., to whom the said recited writ was in form aforesaid directed, and makes return to the court here of the said writ, thereon endorsed, to wit: October 7, 1809, attached at 15 minutes past 1 o'clock P. M., all and singular the goods and chattels, rights and credits, moneys and effects, in the hands of James Latimer, and summoned him garnishee.

JAMES SNYDER, *Deputy*,
For Wm. T. Donaldson, Sheriff.

And the said Walter Brashear does not the said attorney did then and there declare against the said Walter Brashear in the plea aforesaid, in manner following, that is to say: Walter Brashear, late of the county aforesaid, yeoman, was attached to answer Henry Nixon and Thomas M. Willing, executors of the testament and last will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c., and thereupon the said Henry Nixon and Thomas M. Willing, by William Lewis, their attorney, complain that the said Walter, on the 28th day of February, in the year of our Lord 1807, at the county aforesaid, made his certain note in writing, commonly called a promissory note, with his proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note a certain Francis West did then and there deliver, and by the same note, at fifteen months after the date thereof, promised to pay to the said Francis, or order, without defalcation, three thousand five hundred and twenty-seven dollars and eighty-two cents, value received; and afterwards, the said Francis, to whom or to whose order the payment of the said sum of money in the said note mentioned, was to be made before the payment of the said sum of money, or any part thereof, and also before the time appointed by said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the said note, with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the said note, and ordered and appointed the contents thereof to be paid to the said John Nixon, by reason whereof, and by force of the statute and act of the General Assembly, and according to the laws in such case made and provided, and heretofore received within the Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the said sum of money in the said

note mentioned, according to the tenor and effect thereof, and of the said endorsement: and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, and county aforesaid, assumed upon himself, and to the said John faithfully promised the said sum of money well and truly to pay, according to the tenor and effect of the said note and endorsement; and also that the said Walter, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, made his certain other note in writing, commonly called a promissory note, with his own proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note to a certain Francis West then and there did deliver, and by the same note, at fifteen months after date thereof, promised to pay to the said Francis or order, without defalcation, three thousand and five hundred and twenty-seven dollars and eighty-one cents, value received; and afterwards, the said Francis, to whom or to whose order the payment of the same sum of money, or any part thereof, and also before the time appointed by the same note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the same note, with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the same note, and ordered and appointed the contents thereof to be paid to the said John, by reason whereof, and by force of the statute and act of Assembly, and according to the laws in such case made and provided, and heretofore received within this Commonwealth, and the law, customs, and usages of the same, the said Walter became liable to pay to the said John the same sum of money in the same note mentioned, according to the tenor and effect thereof, and of the same endorsement; and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, assumed upon himself, and to the said John faithfully promised the same sum of money well and truly to pay, according to the tenor and effect of the same note and endorsement, yet the said Walter, his several promises and assumptions aforesaid, in form aforesaid made, not regarding, but contriving and intending the said John in these respects to deceive and defraud, the said sums of money, or either of them, or any part thereof, to the said John, in his lifetime, did not pay, nor hath he paid the same, or any part thereof, to the said Henry and Thomas since the death of the said John, although to do this the said Walter, afterwards, to wit, on the 1st day of June, in the year of our Lord 1808, at the county aforesaid, was by the said John, in his lifetime, requested, but the same to pay to the said John, in his lifetime, did refuse, and to the said Henry and Thomas, since the decease of the said John, hath refused and still doth refuse, to the damage of the said Henry and Thomas twelve thousand dollars, lawful money of the United States, and therefore they bring suit, &c. And the said Henry and Thomas also bring here into court the letters testamentary of the said John, whereby it sufficiently appears to the court here that they are executors of the same, and thereof have administration, &c; thereupon further day is given the said defendant until the first Monday of March next. On which first Monday of March, it being the fifth day of the month, in the year of our Lord 1810, the said plaintiffs, by their attorney aforesaid, came again into court, and the said Walter Brashear, the said defendant, although solemnly called, came not, and further day is given him until the first Monday of June next. On which first Monday of June, it being the fourth day of the month, in the year last aforesaid, the said plaintiffs, by their attorney, came

again into court, and the said defendant, although called, came not. And now, in the present term of June, to wit, on the 16th day of August, in the year of our Lord 1810, the said plaintiffs, by their said attorney, came again into court, and the said defendant, although solemnly called, came not; and the said plaintiffs showing to the court here that they have, in all things, complied with the directions of the act of Assembly of the Commonwealth of Pennsylvania, "an act about attachments," it is therefore adjudged by the court here, that the said plaintiffs do recover against the said Walter Brashear, the defendant, their damages by reason of the premises by them sustained, but because it is unknown to the court here what damages the said plaintiffs have sustained by occasion thereof, therefore, at the instance of the said William Lewis, Esq., attorney for the plaintiffs, a writ of the Commonwealth of Pennsylvania of inquiry of damages issues forth out of the court here, in the following words, to wit:

PHILADELPHIA COUNTY, sct.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

Whereas Walter Brashear, late of the county aforesaid, yeoman, was attached to answer Henry Nixon and Thomas M. Willing, executors of the testament and last will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, and thereupon the said Henry Nixon and Thomas M. Willing complain that the said Walter, on the 28th day of February, in the year of our Lord 1807, at the county aforesaid, made his certain note in writing, commonly called a promissory note, with his proper name by him thereto subscribed, bearing date the day and year aforesaid, and the same note to a certain Francis West then and there did deliver, and by the same note, at fifteen months after the date thereof, promised to pay to the said Francis, or order, without defalcation, three thousand five hundred and twenty-seven dollars and eighty-two cents, value received; and afterwards, the said Francis, to whom or to whose order the payment of the said sum of money, or any part thereof, and also before the time of appointment by the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the said note, with the name of him, the said Francis, by him thereto subscribed, assigned, endorsed, and made over the said note, and ordered and appointed the contents thereof to be paid to the said John Nixon, by reason whereof, and the laws in such cases made and provided, and heretofore received within the Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the said sum of money in the said note mentioned, according to the tenor and effect thereof, and of the said endorsement; and the said Walter being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, assumed upon himself, and to the said John faithfully promised the same sum of money well and truly to pay, according to the tenor and effect of the said note and endorsement, and also that the said Walter, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, made his certain other note in writing, commonly called a promissory note, with his own proper hand and name by him thereto subscribed, bearing date the day and year aforesaid, and the same note to a certain Francis West then and there did deliver, and by the same note, at fifteen months after the date thereof, promised to pay to the said Francis, or order, without defalcation, three thousand five hundred and twenty-seven dol-

lars and eighty-one cents, value received; and afterwards, the said Francis, to whom or to whose order the payment of the same sum of money, in the same note mentioned, was to be made before the payment of the same sum of money, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, by his certain endorsement in writing on the same note, with the name of him, the said Francis West, by him thereto subscribed, assigned, endorsed, and made over the same note, and ordered and appointed the contents thereof to be paid to the said John, by reason whereof, and by force of the statutes and act of the General Assembly, made and provided, and heretofore received within this Commonwealth, and the laws, customs, and usages of the same, the said Walter became liable to pay to the said John the same sum of money, in the same note mentioned, according to the tenor and effect thereof, and of the same endorsement, and that the said Walter, being so liable, in consideration thereof, afterwards, to wit, on the day and year aforesaid, assumed upon himself, and to the said John faithfully promised the said sum of money well and truly to pay, according to the tenor and effect of the same note and endorsement, yet the said Walter, his several promises and assumptions aforesaid, in form aforesaid made, not regarding but contriving and intending the said John, although to do this the said Walter, afterwards, to wit, on the 1st day of June, in the year of our Lord 1808, at the county aforesaid, was, by the said John, in his lifetime, required, but the same to pay to the said John, in his lifetime, refused, and still doth refuse, to the damage of the said Henry and Thomas twelve thousand dollars, lawful money of the United States, and therefore they bring suit, &c. And the said Henry and Thomas also bring here into court the letters testamentary of the said John, whereby it sufficiently appears to the court that they are executors of the same, and thereof have administration, &c.; and it was in such manner proceeded in our said court that the said Henry Nixon and Thomas M. Willing, executors of the last will and testament of John Nixon, deceased, who was endorsee of Francis West, ought to recover their damages aforesaid the said Walter Brashear, by reason of the premises, but because it is unknown what damages the said Henry and Thomas have sustained; on that occasion, therefore, we command you that, by the oath and affirmation of twelve lawful and honest men of your bailiwick, you diligently inquire what damages the said Henry Nixon and Thomas M. Willing, executors of the said John Nixon, deceased, have sustained, as well by reason of the premises as for their costs and charges by them about their suit in that behalf expended, and the inquisition you shall take thereof make manifest before our Judges at Philadelphia, at our county court of common pleas, there to be held the first Monday of June next, under your seal, and under the seals of those by whose oath or affirmation you shall make that inquisition, with this writ. Witness Jacob Rush, Esq., at Philadelphia, the ninth day of March, Anno Domini one thousand eight hundred and eleven.

FRED. WALBERT, *Prothonotary.*

At which said first Monday of June, being at day of the said month, in the year of our Lord one thousand eight hundred and eleven, and the return day of the said last aforegoing writ, come again the said plaintiffs into court here, by their attorney aforesaid, and the sheriff of the said county of Philadelphia, to whom the said writ, in form aforesaid, was directed, and makes return thereof to the court here, thereon endorsed, that is to say: "The

execution of this writ appears in a certain schedule, hereto attached, to answer Francis Johnson, sheriff, which said schedule is in the following words, to wit:

PHILADELPHIA COUNTY, set.

An inquisition, indented and taken at the city of Philadelphia, in the county aforesaid, the first day of June, in the year of our Lord one thousand eight hundred and eleven, before Francis Johnson, Esq., high sheriff of the city and county of Philadelphia, by the oaths and affirmation of Samuel ———, jr, Cornelius Stevenson, Frederick Ewinger, Jos. Lyon, Stephen Carrick, Robert Gair, Adam Traquer, Morris Stanly, Robert Gray, Anthony Tanner, Jacob Chryster, James Paul, and George C. Snyder, good and lawful men of my bailiwick, who say, upon their oaths and affirmation, that the said Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, in the writ to this inquisition annexed named, have sustained damages, by means of the premises in the said writ mentioned, against Walter Brashear, defendant, to the amount of eight thousand three hundred and twenty-eight dollars thirty cents, lawful money of Pennsylvania, *and six cents* costs. In testimony whereof, as well I, the said sheriff, as the jurors aforesaid to this inquisition, have fixed our hands and seals, the day and year above mentioned.

Francis Johnson,	[seal.]	George C. Snyder,	[seal.]
Norris Stanly,	[seal.]	Samuel ———, jr.	[seal.]
Robert E. Gray,	[seal.]	F. Ewinger,	[seal.]
Anthony Tanner,	[seal.]	Joseph Lyon,	[seal.]
Robert Gair,	[seal.]	Stephen Carrick,	[seal.]
Jacob Chryster,	[seal.]	Adam Traquer.	[seal.]"
James Paul,	[seal.]		

Therefore, it is considered by the court, that the said Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, do recover against the said Walter Brashear, the defendant, the said sum of eight thousand three hundred and twenty-eight dollars and thirty cents, lawful money of Pennsylvania, their damages aforesaid, in form aforesaid found, and also the sum of eighteen dollars and eighty-six cents for their costs, and such charges by them about their suit in this behalf expended; and the said Walter Breshear in mercy, &c.

PHILADELPHIA COUNTY, set.

I, John Porter, prothonotary of the court of common pleas of Philadelphia county, do hereby certify that the foregoing contains a copy of the record, proceedings, and judgment, in the above cause, from the records of the said court, and that the said judgment remains in full force, unabated, and unsatisfied.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Philadelphia, the twenty-third day of October, Anno Domini one thousand eight hundred and seventeen.

[L. S.] JOHN PORTER, *Prothonotary.*

PENNSYLVANIA, *Philadelphia county*, set.

I, Jacob Rush, Esq., President of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas, court of general

quarter sessions of the peace and orphan's court, in and for the county of Philadelphia, do hereby certify that the foregoing record attestation, made by John Porter, Esq., prothonotary of the said court of common pleas, whose name is thereto subscribed, are in due form. Witness my hand and seal, at Philadelphia, the twenty-eighth day of October, Anno Domini one thousand eight hundred and seventeen.

JACOB RUSH. [SEAL.]

Pleas at Philadelphia, before the honorable Joseph Hemphill, Esq., President, and his associates, Judges of the district court for the city and county of Philadelphia, of the term of September, in the year of our Lord one thousand eight hundred and eleven.

Among other things, it is thus continued: One thousand eight hundred and eleven, a precept of the Commonwealth of Pennsylvania, commonly called a writ of scire facias against garnishee, issued at the suit of Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, against James Latimer, garnishee of Walter Brashear, in the words following, to wit:

PHILADELPHIA COUNTY, set.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

Whereas by our writ we lately commanded you that you should attach Walter Brashear, late of your county, yeoman, by all and singular his goods, chattels, rights, and credits, whatsoever or wheresoever the same might be found in your bailiwick, so that he should be and appear before our justices, at Philadelphia, at our county court of common pleas, there to be held the first Monday of December next, to answer Henry Nixon and Thomas Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c.; upon which said writ you then returned that you had attached all the moneys, goods, and effects of the said Walter Brashear, in the hands and possession of James Latimer; and it was proceeded in such manner in our said court, that the said Henry and Thomas, executors as aforesaid, by the consideration of the said court, ought to recover against the said Walter Brashear the sum of eight thousand three hundred and twenty-eight dollars and thirty cents, which to the said Henry and Thomas, executors as aforesaid, were adjudged for their damages which they sustained as well by occasion of the nonperformance of a certain promise and assumption by the said Walter to the said John Nixon, in lifetime, at Philadelphia, in your county, as for their costs and charges by them about their suit in that behalf expended, whereof the said Walter Brashear was convict, as appears of record; and the said Henry and Thomas, executors as aforesaid, praying that a convenient remedy for the recovery thereof in the hands of the said James Latimer may be had, and we being willing that those things which are rightly done of our said court be duly executed, do command you, that, by honest and lawful men of your bailiwick, you make known to the said James Latimer that he be and appear before our justices, at Philadelphia, at our district court for the city and county of Philadelphia, there to be held the first Monday of December next, to show cause, if any thing he has or knows to say, why the aforesaid Henry and Thomas, executors as aforesaid, their execution for the damages aforesaid of the proper goods and chattels of the said Walter Brashear, in the hands of him, the said James Latimer, being, ought not to have; and have

you then there the names of these persons by whom you shall make it known to him, and this writ. Witness Joseph Hemphill, Esq., at Philadelphia, the eighth day of June, in the year of our Lord one thousand eight hundred and eleven.

JOHN PORTER.

And now, to wit, the first Monday of September, in the year of our Lord one thousand eight hundred and eleven, the sheriff of Philadelphia county aforesaid, namely, Francis Johnson, Esq., maketh return upon the writ aforesaid, that on the second day of July, in the year aforesaid, he summoned the defendant; and now, to wit, September term, A. D. 1811, continued; December term, 1811, continued; March term, A. D. 1812, continued; June term, A. D. 1812, continued; September term, A. D. 1812, continued; December term, A. D. 1812, continued; March term, A. D. 1813, continued; June term, A. D. 1813, continued; September term, A. D. 1813, continued; December term, A. D. 1813, continued; March term, A. D. 1814, continued; June term, A. D. 1814, continued; September ; March term, A. D. 1815, continued; June term, A. D. 1815, continued; September term, A. D. 1815, continued; December term, A. D. 1815, continued; March term, A. D. 1816, continued; June term, A. D. 1816, continued; September term, A. D. 1816, continued; December term, A. D. 1816, continued; March term, A. D. 1817, continued; June term, A. D. 1817, continued.

I, Timothy Mattock, prothonotary of the district court for the city and county of Philadelphia, do certify that the above is a true copy of the proceedings on a certain writ of scire facias, at the suit of Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, against James Latimer, garnishee of Walter Brashear, as the same remains of record in my office. In witness whereof, I have hereunto set my hand, and affixed the seal of the said court, at Philadelphia, the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventeen, and of the sovereignty and independence of the United States of America the forty-second.

T. MATTOCK, *P. D. C.*

I, Joseph Hemphill, Esq., President of the district court for the city and county of Philadelphia, do hereby certify, that the within record and attestation made by Timothy Mattock, Esq., prothonotary of the said court, and whose name is thereto subscribed, is in due form. In testimony whereof, I have hereunto set my hand, the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventeen, and of the sovereignty and independence of the United States of America the forty-second.

JOSEPH HEMPHILL.

PHILADELPHIA, 4th November, 1809.

Dr. WALTER BRASHEAR,
Bardstown, Kentucky.

SIR: From the correspondence of our testator, the late J. Nixon, Esq., we find that you were urged to make payment of your note for $7,055 63 in favor of Mr. West, and endorsed by him, to Mr. J. Nixon, for a valuable consideration. During Mr. Nixon's lifetime no remittances appear to have been made on account of the notes; of course the whole debt, with the ac-

cruing interest to the present time, is due to the estate we represent. Mr. West, since the death of Mr. Nixon, has stated that a remittance of ginseng had been made to Mr. J. Latimer, of this place, to provide in part for the payment of your notes, and also a balance of about $2,000 due his estate; his assignees, Messrs. Mifflin and Lapseley, on being informed of this remittance laid an attachment in the hands of Mr. Latimer to secure their balance, which of course established their priority of payment, as their proceedings have taken place several months since; finding a sum would remain with Mr. Latimer, after payment of their demand, nearly sufficient to discharge one of your notes, we attached the same for the benefit of Mr. Nixon's estate, and no provision has been made for the payment of one of your notes, you will oblige us by pointing out when we may expect its discharge, and to request that all remittances, on account of your notes, assigned to Mr. Nixon, may be made to us, his representation; we think a direction from you to Mr. J. Latimer to pay over the balance due on your ginseng on the attachments would save you much interest, as many months must elapse before the law will possess either the assignees or us of our legal claims.

Respectfully,

HENRY NIXON and
T. M. WILLING,
Executors of the

PHILADELPHIA, *2d February*, 1

SIR: We beg leave to call your attention to the following letter, and to state, your funds in Mr. Latimer's hands must lay without interest under the attachment until they are divided, unless you order him to pay over the same in the proportions that are due, first to Mr. West's assignees, for the balance of your account as settled with Mr. West, when in Kentucky, of about $2,000, and what remains on the two notes in our possession, as stated in our letter of the 4th November last, together $7,055 63.

We remain your obedient servants,

HENRY NIXON and
T. M. WILLING,
Executors of

SIR: It was our hope that, before your departure for Kentucky, an arrangement would have been made by you with Mr. Latimer, which would have enabled us to have received from your effects in his hands the amount of your notes in our possession; in this expectation we were disappointed, being left to legal remedy. Under the attachment judgment has been had, and the usual proceedings to compel Mr. Latimer to account for the amount in his hands belonging to you; Mr. Latimer has lately failed, and assigned all his property to pay his preferred creditors in the first instance, to the extent of $10,000, and afterwards his general creditors, of which latter class you are one. It is believed his property will not do more than pay his preferred debts: of course we cannot calculate on receiving any part of your debt from him, but must look to you for its discharge, therefore oblige us by pointing out your means of payment, and state when we may expect it, as we are desirous of communicating to those interested some satisfactory information relative to the claims. We offered Mr. Latimer security if he would pay us the amount due you, which was declined on the ground of his being advised to do so; we believe it was not in his power

to pay at the time, his credit having been long suspected by many as well as by ourselves; indeed you may recollect *to receive* payments, which arose from a belief that your funds in his hands insecure.

We remain, &c.

HENRY NIXON and
THO. M. WILLING,
Executors of John Nixon.

Dr. WALTER BRASHEAR,
Bardstown, Kentucky.

PHILADELPHIA, *7th March*, 1810.

Messrs. LAPSELEY & MIFFLIN, *assignees of F. West:*

GENTLEMEN: Enclosed is our reply under date of 28th ultimo to Mr. West's objections on the account of the late Mr. Nixon, as rendered his assignment. You will oblige us by considering our remarks, and withdrawing all opposition to our attachment on Dr. Brashear's property in the hands of Latimer; you certainly can demand of us a settlement, and we must pay over to you any thing recovered beyond what will satisfy the just demand of Mr. Nixon's estate. We remain yours,

HENRY NIXON and
THO. M. WILLING,
Executors of John Nixon.

PHILADELPHIA, *28th February*, 1810.

Mr. FRANCIS WEST, *Philadelphia:*

SIR: Your objections to the account furnished on behalf of the estate of John Nixon, have received our immediate attention, and we are pleased to find them so specified as to have no difficulty in our reply. The profit on goods, under the 28th of February, 1806, in the sum of $1,245 48, is taken from an account rendered by yourself; the entry is in the handwriting of Mr. Nixon; its character of course cannot be charged without full proof of its being relinquished, of which there is no trace with us. The charge of rent was made with your approbation at the time, and appeared so moderate as to receive your consent "as just, and one which must be allowed." Copy of the account furnished by Mr. Nixon to your assignees, with an endorsement on it by him to that effect; we hold the account you approved by letter, before your departure for the western country, stating that you had made all the entries to correspond excepting that of rent: nothing appears to be charged you but what was paid after your account had been varied by sundry debts and credits, which are explained by the continued account now enclosed you. Hart & Bartlett's debt having been recovered, the same is fully credited, they having been charged with the interest on their notes to Mr. Nixon, and credited with all the moneys received on their account. We shall use our best endeavors to recover from Dr. Brashear's effects in Mr. Latimer's hands sufficient to liquidate the balance of your account with the estate, and hand over to your assignees any sum received beyond the claim we represent. In the mean time, if your assignees were to withdraw all opposition to our receiving from Mr. Latimer the sum over which we must

ultimately recover under the attachment, the interest would be saved both to the Doctor and your estate.

We remain your obedient servants,

HENRY NIXON and
TH. M. WILLING,
Executors of John Nixon.

Postscript.—A small balance is due from Mr. Nixon's estate to Hart & Bartlett, of $103 63, which ought to be paid them unless you have further claims of these gentlemen; and as Mr. Nixon has received a the borrowed money of $520 50 on the sum of $1,041, the executors must look to the assignees for the balance of that demand, applying to the credit of the account whatever may be recovered on the notes of Dr. Brashear, lodged and assigned by you to Mr. Nixon, as a security for the amount due him.

PHILADELPHIA, *June* 24, 1811.

JAMES LATIMER, Esquire:

DEAR SIR: Mr. Lewis inform us that you can now, with safety to yourself, pay into court the balance due Brashear, and that the executors of Mr. Nixon, by giving bond in the proper form, can secure the amount under their judgment; this facility however rests with you, and give or not as you feel authorized. We are respectfully,

HENRY NIXON and
THO. M. WILLING,
Executors of J. Nixon.

Afterwards, to wit, at May term of court aforesaid, and in the year 1819, (until which time this cause was regularly continued,) on motion of the complainant, by his attorney, leave is given him to file an amended bill herein, which is done accordingly. And it appearing to the satisfaction of the court that the defendants are no inhabitants of this district, and they having failed to enter their appearance herein, agreeably to law and the rules of court, on motion of the complainant, it is ordered, that unless the said defendant appear here on or before the first day of the next term of this court, and answer the complainant's original and amended bills, the same will be taken for confessed against them, and the matters thereof decreed accordingly. And it is further ordered, that a copy of this order be published in some authorized newspaper of this State for twelve weeks successively.

To the honorable the Judges of the circuit court of the United States for the seventh circuit court:

Walter Brashear, complaining, sheweth, that the account marked A, filed herewith, and referred to as a part of this bill, contains a true statement of the and money in the hands of Latimer, or when the attachment issued and levied that the and the money remained with him, and by *the laws silent* a long time thereafter, and, by the laws of the State of Pennsylvania, the plaintiff in the attachment had the right and power to demand and obtain from the said Latimer security for the forthcoming thereof agreeably to the final of the court, or its withdrawal and safe deposit; and if reasonable and usual attention had been bestowed to this matter, that measure

would have been adopted, and all parties thus saved from injury by the failure of Latimer; but in contempt of this duty, they permitted the whole fund to remain subject to the management, even assenting and encouraging its export, still leaving the proceeds for years at his pleasure, never even yet having issued execution against him, and by this careless and gross negligence of the plaintiffs in the attachments the funds were ultimately lost. And your orator charges, that his attachment was levied and the further proceedings had under the advice, procurement, and active participation of the said West; he therefore prays that the defendants may answer each allegation of this bill specially, that they severally state if this measure was resorted to by them, jointly uniting and participating; if not the statement referred to a correct account of the and money in the hands of Latimer when the attachment issued; did they not long remain there; not the reported with their privity and request; did not the proceeds still remain; were any measures to obtain security attempted; might this have been successfully done by the laws of Pennsylvania, then in force, &c., &c. Your orator prays as in his former bill, &c., &c.

JA. HAGGIN.

MAY TERM, 1824.

Sworn to in open court by Walter Brashear.

Attest, JOHN H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the November term of the court aforesaid, in the year 1819, this cause was remanded to the rules.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the year 1820, came the defendant West, and filed his answer herein, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery, the answer of Francis West, one of defendants named in bill of complaint of Walter Brashear. This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold insufficiencies in the complainant's said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material for him to make answer unto, he answers and says, that he admits to be true that the complainant made and delivered to him, this defendant, two promissory notes, dated at Philadelphia, on the 28th day of February, 1807, payable to the order of this respondent, one of them for the sum of three thousand five hundred and twenty-seven dollars and eighty-two cents, and the other of them for the sum of three thousand five hundred and twenty-seven dollars and eighty-one cents, making together seven thousand and fifty-five dollars sixty-three cents, which notes were payable fifteen months after the date thereof; that the said notes were endorsed by this respondent, and by him delivered to the said John Nixon, to wit, in the month of April following, as a collateral security for the debt owing to him, the said Nixon. That the said John Nixon afterwards died, leaving the said Henry and Thomas M. Willing his executors. That, after the endorsement and delivery of the said note as aforesaid, to wit, on the 21st day of April, 1807, this respondent did assign and convey all his estate, real and personal, to John Lapseley, Samuel Mifflin, and Henry Nixon, in trust, for the payment of his debts in the order and manner therein provided for. That respondent believes to be true that complainant did at some subsequent time consign, from Kentucky, to a certain James Latimer,

in Philadelphia, not Henry Latimer, as erroneously stated, it is supposed, in the bill of complainant, a quantity of ginseng, although the respondent is ignorant how much, but as to the particular instructions or authority in relation to the sale thereof given by the complainant to said Latimer, this respondent has no knowledge, nor as to the intention of the complainant in relation to the disposition of the proceeds thereof, save and except that the respondent was informed that the said Latimer was *thereout* to indemnify himself for some security into which he had entered on behalf of the complainant, and that the surplus would be subject to the complainant's order. That the respondent is not informed and does not know at what time and for what sum the said Latimer sold the said ginseng, otherwise than *that if it* was sold by the said Latimer, that he should take the whole to his own account at from forty to fifty cents the pound, and be answerable for the proceeds in six months, and that he expected there would be a large balance in his hands after satisfying his engagement as security for the complainant. This respondent admits, that, on the 3d day of November, 1808, he received from the commissioner of loans, in the city of Philadelphia, the sum of one hundred and twenty dollars for an order of William Bush, of Kentucky, which was delivered to him by complainant in said State; but the respondent expressly denies that it was received on account of the debt due from the complainant to this respondent, which had been by him before that time assigned to the said Lapseley, Mifflin, and Nixon, and does declare and assert that the money to be received on said order was to be and still is in the hands of this respondent, subject to the complainant's order, on account of subsequent transactions between them. The respondent also admits that the complainant did become his special bail in a suit that was instituted against him by George Anderson, late of Lexington, in the State of Kentucky; and he further admits that he is entitled to a credit for the money which was received from him by the said Anderson, but whether the money so recovered was paid by him, as he alleged, on the 28th day of October, 1810, or whether it amounted to the sum of three thousand and seventy-seven dollars and thirty-three cents, as stated in said bill, he does not know. The respondent states that the said Anderson had attached a debt due to the respondent from the firm of Thomas and Robert Barr, in Lexington aforesaid, about the time of the respondent's assignment to the said Lapseley, and Mifflin, and Nixon, but as to the precise date thereof he begs leave to refer to the record of said attachment. That the respondent endeavored to settle with the said Anderson, when the respondent was in Kentucky, but did not succeed, said Anderson refusing to allow him a credit for a debt which he, as one of the firm of Jordan and Anderson, owed to James G. Murray, of Frankfort, in said State, amounting to two thousand dollars and upwards, and which debt the said James G. Murray had assigned to the respondent as a collateral security for a debt of upwards of twenty-six hundred dollars, due to him by said Murray. That shortly before the respondent left Lexington the said Anderson arrested him, and as to the precise time of his arrest he also begs leave to refer to the record of the suit, and Thomas T. Barr became his bail, and the complainant afterwards entered special bail for him in said suit, and the respondent committed all the papers and management of the business to an attorney. That some time afterwards, in the winter or spring of 1810, the respondent was informed that the said Anderson had obtained judgment against him, and for a much larger sum than he was entitled to; John Lapseley, one of the respondent's assignees, afterwards went to Kentucky, and

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whilst there, in the month of September following, and before the judgment against the complainant, as special bail, succeeded in having the account of said Anderson adjusted, and for the balance agreed on such adjustment to be due; judgment was soon after entered against the complainant as special bail, as respondent believes, which balance he further believes to have been little more than one half of the same, for which judgment, although no credit was given in said adjustment for the debt due to Murray, or any part thereof, and which debt still remains due and unpaid. The respondent further admits that the executors of John Nixon, deceased, did sue out a foreign attachment from the court of common pleas for the city and county of Philadelphia, to December term, 1809, upon the two promissory notes before mentioned, which attachment he believes was served on James Latimer as garnishee, and that judgment was entered therein in August, 1810; and also that the assignees of this respondent did cause a foreign attachment in his name, but to their use, to issue from the same court on the 7th of April, 1809, returnable to the June term in same year, against the complainant, to recover a balance of an account then due of two thousand one hundred and forty dollars seventy-six cents; that the said attachment was served on James Latimer as garnishee, and judgment was therein entered for the plaintiffs, in January, 1810, as of December term, 1809, agreeably to the laws of this Commonwealth; and the respondent denies that there was any undue or improper procrastination in this suit, or by the laws of this Commonwealth the plaintiffs therein were bound to proceed or otherwise than they did in said suit. And this respondent further answers and says, that at the time referred to in the complainant's bill of complaint, he, this respondent, was under the impression that the said James Latimer was solvent, but whether he was in flourishing circumstances, and ready and willing to pay the funds in his hands over to the complainant or his order, and would have done so if he had not been prevented by said attachments, he cannot say further than the said Latimer told the respondent that he had received authority from the complainant to do so if the attachments were withdrawn, as is alleged in said bill of complaint; nor can he admit that the said suits were procrastinated by this respondent and his trustees, and the said executors of John Nixon, deceased; and he expressly declares that neither of the parties to the said suits respectively had any concern with, control over, or in any way impeded the other suit, or that the money or proceeds of said ginseng might have been forced out of the hands of said Latimer, as is alleged in the said bill of complaint. The respondent admits, that, in the summer of 1811, the said James Latimer failed, and soon after made an assignment for the benefit of his creditors, but he has no knowledge of the state of affairs of said Latimer, nor the precise date of his assignment, as he never saw the same, nor can he say whether the complainant sustained any loss by the failure of said Latimer; but this the respondent undertakes to aver, that he is legally advised that the complainant, at all times, was by law allowed to enter special bail, and dissolve the attachment, and so release the funds in the hands of James Latimer, and take away all excuse from him for not paying the same, as he might have satisfied the debts upon which the said attachments were founded; and if any loss happened to the complainant, it is, as this respondent humbly conceives, imputable to the complainant himself alone, because he did not satisfy said debt or enter bail and dissolve the attachments. And this defendant, further answering, says, that the said James Latimer has been frequently absent from the

city of Philadelphia, since his failure in 1811, to Europe and the East Indies, but that this city is his home; the respondent is utterly ignorant of the present circumstances of the said Latimer. And this defendant, further answering, says, that he does not admit, but does deny, that, by the laws of Pennsylvania, either he, this defendant, or the said executors, or the said trustees, or any of them, made themselves responsible to the complainant for any loss sustained by the complainant in consequence of the failure of said Latimer, or that, by the same laws, they are further responsible to the complainant for any loss he may incur by the said failure, under the circumstances stated in said bill of complaint, or that the said attachments were illegal in their commencement, as alleged in said bill of complaint. And this respondent does expressly deny that any transfer was ever made to him by the said Thomas M. Willing and Henry Nixon, executors as aforesaid, of the said notes, as stated and alleged in the complainant's bill of complaint, and does aver that the said notes still remain in the hands of said executors, and that the respondent has no interest in them, for that after satisfying the object for which they were originally given to John Nixon, they became, by assignment of this respondent, the property of his assignees, in trust, for his creditors. And he further says, that said notes have never been in his hands nor under his control since they were first delivered by him to the said John Nixon, and that if any suit has been commenced thereon in his name, it has been without his knowledge or consent, as authority may legally have been given by his transfer thereof to said John Nixon. And further, he does not know nor admit that if a balance was struck on equitable principles, he, the said West, and the said executors or trustees would fall in debt to the complainant as alleged in the said bill of complaint. And this defendant does deny all and all manner of combination and confederacy with any person or persons whatever; without that, that any other matter or thing in the complainant's bill of complaint contained, material for the defendant to make answer unto, and not herein and hereby sufficiently answered unto, confessed, or denied, is true to the knowledge and belief of this defendant, all which the respondent is ready to aver, maintain, and prove, as this honorable court shall award; and prays to be herein dismissed, with his reasonable costs and charges in this behalf most wrongfully and unjustly sustained, &c.

Francis West, the defendant, in the foregoing answer, being sworn according to law, saith, that the several matters and things contained in said answer, so far as they relate to matters of his own knowledge, are true, and so far as they relate to other matters, he believes them to be true.

FRANCIS WEST.

Sworn to the 19th day of October, A. D. 1819, before me,

RICHARD PETERS,

One of the Judges of the U. S. C. C. for the Penn. dis.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the year last aforesaid, (until which time this cause was continued,) came the complainant, and filed the following exceptions to West's answer, to wit:

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BRASHEAR vs. WEST, &c. } *Exceptions.*

The complainant says, that the answer of the defendant West is insufficient and defective in this, to wit: 1st, The defendant has not answered touching the correctness of the account referred to and filed by the amended bill, neither admitting or denying, or expressing his belief in that respect. 2d, He has not said if the proceeds of the sang was in the hand of Latimer at the time of the issuing of the attachment, whether it was shipped with the knowledge or approbation of the defendants or any of them, or if they had power, or made an effort to obtain security from Latimer, or to withdraw the article, or show why it was not done.

JA. HAGGIN.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, and year aforesaid, in the month of September, came the complainant, and gave the defendant Lapseley a rule to answer.

And afterwards, to wit, at rules held in the month of October following, came again the complainant, and on his motion the bill is taken for confessed as to the defendants Mifflin, Nixon, and Lapseley, and this cause is set for hearing as to all the defendants.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1821, came Francis West, by his counsel, and filed his amended answer herein; which amended answer is as follows, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Francis West, a defendant named in the bill of complaint of Walter Brashear, to the amended bill of said complainant. This defendant, saving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said amended bill, for answer thereto, or to so much as he is material for him to make answer unto, he answers and says, that the only knowledge he has of the account (A) filed with and referred to in the amended bill of the complainant is, that in July, 1810, Henry Nixon showed to this respondent an account of sales, and an account current, which he understood said Nixon had received from James Latimer; that this respondent took two copies of said account, one of which he retained, and the other he sent on the 26th day of July, 1810, to the complainant by mail. That a copy of the account of sales retained by this respondent corresponds with marked A, referred to in the amended bill; and the account hereto annexed, marked A B, is a just, true, and full copy of the copy of the account current retained by this defendant. That this defendant does not know nor admit that the said account, marked A, before referred to, is a correct account of the ginseng and money in the hands of Latimer when the attachment issued. That if he had no knowledge of the actual sales of said ginseng, although he had understood said Latimer at various times that he should take it afterwards; that he had taken it to his own account, and has seen different accounts thereof made out by the said Latimer. That the account marked A purports to be an account of sales of said ginseng by said Latimer to himself, and the proceeds of said sales are credited to the complainant in the account current by said Latimer, of which a copy is hereto annexed; from which account current, if the same be correct, it appears that the balance in favor of the complainant on the amount in the hands of Latimer at the time the attach-

ment issued, was $4,985 23 cents, but this respondent does not know and cannot admit that the said accounts are correct, and therefore he prays that if it be material the complainant may be required to make full proof thereof. The defendant, further answering, says, that he never assented to nor encouraged the exportation of the ginseng, nor does he know or believe that any of the defendants ever assented to or encouraged said exportation; that he understood from the said Latimer that he had taken it to his own account before the attachment was laid by the executors of John Nixon, and also that before said attachment was laid the said Latimer had himself issued an attachment, which he had caused to be levied in his own hands, and which was returnable to the March term, 1809, and on which a judgment was entered in October, 1809. This defendant, further answering, says, that he does expressly deny that the attachment issued by the executors of John Nixon was levied, or any proceedings had therein under the advice or procurement or with the participation of this respondent. And he further says, that he does not know nor believe that the plaintiff in said attachment had power to obtain any security from Latimer, or to withdraw the funds of property from his hands, because he has understood and believes that according to the laws of Pennsylvania no such power or authority in the plaintiff in attachment exists.

FRAN. WEST.

Francis West, the respondent above named, being duly sworn according to law, on his oath, saith, that the several matters and things contained in the foregoing answer, so far as they relate to his own knowledge, are true, and all matters therein he believes to be true.

FRAN. WEST.

Sworn the 14th day of November, A. D. 1821, before me,

RICHARD PETERS,

Judge of the Pennsylvania district of the United States, exercising jurisdiction in the eastern district of Pennsylvania.

EXHIBIT A B.

DR. *Walter Brashear in account with James Latimer.* CR.

1809.					
January 17,	To cash paid carriage of ginseng from Pittsburg		$77 59	By proceeds per account	
"	Do. costs of suit - - -		31 18	sales annexed - -	$11,861 95
21,	Do. carriage of ginseng - -		53 82		
31,	Do. my 2 notes dated 5th January, 1809,				
	1 six months, for -	$3,672 78			
	1 six do. - -	1,938 06			
			5,610 84		
February 2,	Do. paid carriage of ginseng from Pittsburg		49 07		
3,	Do. cash - - - - -		123 82		
March 18,	Do. cash paid G. Bryan on account ginseng		223 33		
April 3,	Do. do. do. do. -		130 00		
May 6,	Do. damages on your bills - - -		369 45		
	Do. freight 57 barrels from New Orleans -		119 70		
	Do. balance - - - -		4,985 23		
			$11,861 95		$11,861 95

Interest account to be settled hereafter, and costs of suit, &c. J. L.

This is an exhibit (A B) referred to in my answer. FRAN. WEST.

And afterwards, to wit, on the 7th day of December, 1821, came Samuel Mifflin and John Lapseley, and filed their answer herein, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Samuel Mifflin and John Lapseley, two of the defendants named in the bill of complaint of Walter Brashear; these defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the manifest errors and insufficiencies in the complainant's said bill contained, for answer thereto, or to so much thereof as these defendants are advised is material for them to make answer unto, they answer and say, that they believe and admit to be true, as is charged in said bill of complaint, that the complainant made and delivered to Francis West two promissory notes, dated the 28th day of February, 1800, payable to Francis West or order, fifteen months after date, one of them for three thousand five hundred and twenty-seven dollars eighty-one cents, in the whole seven thousand and fifty-five dollars sixty-three cents. That the West, on or about the first day of April, 1807, did endorse the said notes to John Nixon, and deliver them to him, as collateral security, for a debt owing by said West to said Nixon; that the said John Nixon afterwards did, and Thomas M. Willing and Henry Nixon have acted as his executors; that on or about the twenty- day of April, 1807, the said Francis West did assign, convey, and transfer to these respondents, and Henry Nixon, all his estate and effects in trust for the payment of his debts in the order and manner , and these respondents further answer and say, that of the particulars of the transactions between the complainant and James Latimer, called Henry Latimer in the bill of complaint by mistake, as they suppose, these respondents are ignorant, save that they have been informed that upon a statement of account by the said James Latimer, dated July 20th, 1810, there appeared to be a balance due from said Latimer to the complainant on the 1st day of October, 1809, of four thousand nine hundred and eighty-five dollars twenty-three cents; that they have been informed that Francis West did, on or about the 3d day of November, 1808, long after his assignment to these respondents and Henry Nixon, receive from a certain William Bush the sum of one hundred and twenty dollars, as mentioned in the bill of complaint; but these respondents deny that the said sum of money, so received by said West, ever came to the hands of these respondents as trustees of said West; that they have been informed that the complainant did at some time become special bail for the said Francis West, in a suit brought by George Anderson, but of the proceedings in said suit these respondents are wholly ignorant, and therefore cannot admit the allegations in the complainant's bill of complaint concerning the same; and these respondents further answer and say, that true it is, that the executors of John Nixon, deceased, did sue out a foreign attachment from the court of common pleas for the city and county of Philadelphia, to the term of December, in the year 1809, upon the notes given as aforesaid by the complainant to the said West, and by said West endorsed, to said John Nixon, which attachment was against the complainant, and, as these respondents have been informed and believe, was served on James Latimer as garnishee; and also that these respondents, together with Henry Nixon as assignee of Francis West, did cause a foreign attachment in the name of Francis West, to their use, to issue from the same court, returnable to the term of June, in the same year, against the complainant, to recover the balance of account due from him to the said West, at the time of the

assignment made by said West as before mentioned, in trust, for his creditors, which balance was acknowledged to be due by the complainant, being the sum of two thousand one hundred and forty dollars and seventy-six cents, of which account and acknowledgment a true copy is hereto annexed, and which these respondents pray may be taken as part of this their answer; that the said attachment was served on James Latimer as garnishee, and such proceedings were afterwards duly had in said suit, that judgment was entered for the complainant on the 20th day of January, in the year 1810, as of the December term, 1809, agreeably to the laws of the Commonwealth, and that these respondents do expressly deny that there was any undue procrastination of said legal proceedings: and these respondents, further answering, say, that they do not admit that at the time they caused the attachment to issue aforesaid to the said James Latimer, who was, as is alledged by the complainant, in solvent circumstances, or that he was willing to pay the funds to the complainant, or to his order, or that he would have done so if he had not been prevented by said attachment; and farther, that they cannot admit that said Latimer and continued in the circumstances stated in the bill of complaint, and do expressly deny that there was any procrastination of said suits, or any contention between the said executors and trustees, which prevented the recovery of the money or funds from said Latimer. That true it is, as your respondents are informed and believe, that said James Latimer did, on or about the 29th day of August, 1811, make an assignment of his property in trust for his creditors, and that the said Latimer has been frequently absent from the city of Philadelphia since that time, upon commercial enterprises, and is now absent upon a voyage to Canton, but as to his present circumstances the respondent is ignorant: and these respondents, further answering, do deny that by the laws of Pennsylvania they have made themselves responsible to the complainant by suing out the said attachment for any loss sustained by him in consequence of the failure of said Latimer, and do also deny that by the same laws they are further responsible to the complainant for any loss he may incur by the said failure, by reason of the said notes being given to the said West, in the city of Philadelphia, and the residence of the complainant in Kentucky; and do also deny that the said attachments were illegal at their commencement, or have been illegal at any stage of their prosecution, and they do aver that the said attachment was by them well and legally and duly sued out and prosecuted, and that the complainant might, by the laws of Pennsylvania, as they are advised, have dissolved the said attachment at any time by the putting in of special bail to the action, and thus relieved the funds in the hands of said Latimer, or might at any time have relieved said funds by paying the just debts upon which the said attachment issued, and that in as much as the complainant has not paid said debts, nor put in bail to the said suits, he cannot, either by law, or according to equity or good conscience, charge these respondents with any loss whatever, as having been occasioned by issuing said attachments; and further the respondents say, that they have no knowledge of any transfer of said notes by said executors to said West, nor of any proceeding thereon at law, as stated and alleged in the complainant's bill of complaint; and these respondents do deny all and all manner of combination and confederacy with any person or persons whatever, without that any other matter or thing in the complainant's bill of complaint contained material for the defendants to make answer unto, and not herein and hereby well and sufficiently answer-

ed unto, confessed, or avoided, is true to the knowledge and belief of this respondent, all which these respondents are ready to aver, maintain, and prove, as this honorable court shall award, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully and unjustly sustained.

SAMUEL MIFFLIN.
JOHN LAPSELEY.

Samuel Mifflin and John Lapseley being sworn according to law, declare and say, that the matter contained in the foregoing answer, so far as concerns their own acts and deeds, is true of their own knowledge, and that what relates to the acts and deeds of any other person or persons they believe to be true.

SAMUEL MIFFLIN.
JOHN LAPSELEY.

Sworn to the 4th day of November, A. D. 1817.
RICHARD PETERS,
Judge of the U. S. for the district of Pennsylvania

Dr. *Walter Brashear in account with Francis West.* Cr.

1805.				1806.		
Nov. 30	To amount of sundry goods sent by Thomas Barr - -	$3,963 87		February,	By cash received from him this month on account—	
	To an error in extending 141 yds. blue grod. prints, 228 for 340 yards, difference 114 yards, at ½£ 17*s.* 6*d.* - - -	46 87			Say 17, - - 2,000 00	
	To pieces carpeting, 144½ yds. at 9*s.* 6*d.*, and 4 coverlets, at 33*s.* 9*d.* - - - -	187 53			21, - - 2,000 00	
Dec. 12	To cash paid Geo. Gibson carriage of 11 barrels ginseng from Pittsburg - - - -	41 52			26, - - 2,000 00	
13	To do. paid John Henderson do. for 32 barrels from do. 104 97				28, - - 2,000 00	
	Moses Sprowle do. 12 casks and 1 bag - 56 67					$8,000 00
		161 64				
	To do. paid Hugh McCartney carriage of 15 casks of ginseng from Pittsburg - -	37 84				
17	To do. paid Geo. Wilson do. for 13 casks and 1 bag - 56 25					
	Adam Smith do. 13 casks, 2 bags - - 57 02					
		113 27				
26	To do. paid Jos. Howard do. from Wheeling, 18 casks - -	58 65				

1805.				1806.		
27	To cash paid B. McMann for carriage of 18 casks from Wheeling	$57 64		March 5	By cash received from him -	$1,000 00
28	To do. paid Daniel Danville, for carriage from do. 37 casks -	102 28			By do. neat proceeds of Lewis Clapeir's note and interest—$1,676 35 - - -	1,662 94
31	To do. postage of letters from Dennis Brashear and W. Gibson, with receipt for ginseng -	1 10		27	By do. from him - -	300 00
1806.				31	By do. neat proceeds of Lewis Clapeir's note and interest 1,600 dollars - - -	1,590 68
January 9	To do. paid Peter Keifer, for 22 casks from Wheeling - -	90 44		April 12	By sundry goods from him -	3,040 07
17	To do. paid John Wayle, hauling 2 loads from do. - -	123 77		30	Lapseley and *Akin* for Jos. Coppinger's 2 bills of 70*l.* Irish sterling, equal to 64*l.* 12*s.* 4*d.* at par - - - -	287 18
21	To do. paid Geo. Manning, do. 2 loads from do. - 74 09				By L. Clapeir's note 1st March, at 3 months, due ¼ - -	4,425 45
	John Mayes, do. 1 load from do. - - 92 47				By do. at 4 months, ¼ July -	4,425 45
		166 56			By do. at 5 months, ¼ August -	4,348 95
26	To do. paid John Glendining, on account hauling one load from Wheeling - - -	80 00		May 7	By his check on Bank U. S. America - - - -	123 69
27	To do. paid his bill at 60 days, in favor of Annesly and Hill -	200 00		12	Joseph Winter's acceptance paid this day - - -	1,212 50
February 1	To do. paid Jo. Keller, hauling one load ginseng from Wheeling - - - 88 16					
	Do. Jacob Keller, do. 50 00					
		138 16				
15	To do. paid John Flenaman, hauling 2 barrels from do. short paid	4 83				

		ing 2 barrels from do. short paid	4 85
	18	To do. paid himself - -	1,500 00
	22	To do. - - - -	40 00
	25	To do. paid Jos. Eccles, hauling load ginseng from Wheeling -	75 91
Feb.	26	To do. paid himself 2 checks -	420 00
		To do. paid Bazil Wiggins, hauling 1 load from Wheeling -	57 50
		To do. paid himself - -	30 00
	27	To do. do. in 2 checks -	700 00
	28	To postage of letters this month -	1 36
March	3	To cash paid *Dichell*, paid for a notarial copy of Andrew Porter, paid note - - -	1 25
	31	To do. paid him this month,	
		3, - - - 55 00	
		6, - - - 100 00	
		8, - - - 200 00	
		12, - - - 500 00	
		15, - - 1,044 75	
		19, - - - 300 00	
			2,199 75
		To postage of letters from him to my care, this month - -	4 97
April	3	To sundry goods, per bill -	2,740 82
	12	To my acceptance this day of his bill in favor of T. Beatty, *at* goods - - -	340 39
	15	To cash paid Rallen, hauling 12 barrels 4 kegs ginseng by Pittsburg - - -	36 15

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1806.				1806.		
April 30	To cash paid him at sundry this month—			June 23	By cash per mail from T. and R. Barr on his account - -	$500 00
	11, - - -	150 00		August 6	By do. from per mail - -	710 00
	18, - -	100 00		18	By do. from T. and R. Barr on his account - - -	500 00
	19, - - -	100 00		Sept. 7	By Hart and Bartlett's bill, paid this day, remitted by T. and R. Barr on his account - -	1,000 00
	21, - - -	30 00		Oct. 15	By cash paid Thomas T. Barr -	1,046 85
	22, - - -	50 00		Nov. 19	By do from T. and R. Barr -	230 00
	23, - - -	100 00		30	By 4 barrels crude ginseng, sold on 12th March last, 362 weight nett, at 38 cents - -	137 56
	24, - - -	500 00				
	26, - - -	200 00		1807.		
	28, - - -	200 00		Jan. 13	By cash, neat proceeds my acceptance 10th instant his bill at 90 days, $1,587 21 - -	1,518 37
	29, - - -	992 77				
	To this sum from Thomas Jones, paid on my account - -	$120 00		14	By do. neat proceeds do. 6th inst., at 90 days, for $1,632 12 -	1,560 72
	To ½ piece cambric for handkerchiefs - - -	6 90		21	Do. neat proceeds do. 19th inst., at 90 days, for $1,701 09 -	1,628 10
	To postage of letters from him -	3 23				
	To 1 doz. white sheep skins, paid S. and P. Kelly - -	6 56				
May 31	To cash paid his drafts this month					
	1, To Isaac Smith 2,396 00					
	6, Aaron Denman 393 00					
	21, Samuel Reynolds 95 41					
	29, Wm. Crawford 173 19					
		3,057 60				
June 30	To postage this month - -	1 02				
	To cash paid his bills this month,					

		2, To Samuel Trotter	900 00				
		4, Corp. Ellis & Shaws	797 02				
		Charles Ford	363 29				
		9, Bazil Brashear	463 67				
		10, Joseph Lippincott	692 70				
		18, Jacob Justice & Co.	82 60				
		27, John Conyers	401 00				
		28, Jacob Justice & Co.	1,000 00				
		3, His acceptance P and Smiley's bill	1,220 00				
		5, Dennis Brashear's bill	424 14				
				6,344	42		
		To postage this month - -		77			
July	31	2, To Simon Gratz and Co.	2,053 93				
		3, Corp. Ellis & Shaws	813 35				
		10, Jos. Lippincott	692 70				
		18, Lapseley and Akim	698 63				
		Wm. Crawford	500 00				
		19, Waddington & Co.	1,100 00				
		20, Simon Gratz & Co.	773 17				
		21, John Auchincloss	379 43				
		23, Isaac Smith	2,358 35				
		25, James Latimer, jr.	295 00				
		29, James Williamson	179 35				
		Jacob Springer	169 69				
		To postages this month - -		9,953	38		
August	31	To cash paid his bills this month.		1	85		
		4, To John Dabadie	311 58				
		11, To John McCally	1,176 00				

1806.				1807.			
	18, Cavender & Son	1,216 16		Feb. 26	By cash received from him		
	19, James H. Cole	270 83			7, - -	1,580 00	
	20, Denman and M.	156 60			9, - -	1,000 00	
	23, John McCauly	1,100 27			11, - -	2,500 00	
	Samuel Meeker	1,169 55			12, - -	2,200 00	
	25, James Duvall	894 36			14, - -	1,000 00	
	26, Isaac C. Jones & Co.	338 61			16, - -	1,000 00	
	28, Meeker & Baldwin	400 30			19, - -	1,000 00	
	J. & P. Kelly	216 81			23, - -	370 00	
	29, A. Henry & Co.	520 22					$10,680 00
			$7,771 26		By neat amount of L. Clapier's note at 60 days, $1,500 -		1,484 00
	To postage this month - -		2 31				
Sept. 19	To cash paid his bill in favor of Wm. Crawford - -		5 72		By neat proceeds my acceptance 14th ult. of his bill at 90 days, for $1,632 12 - -		1,583 00
30	To postages this month - -		52				
Oct. 25	To cash paid Thomas Bringhurst on his account - -		25 00		By my bill 14th instant on Wm. Gibson, favor G. Anderson by his order - -		500 00
31	To do. paid his bills this month in favor—						
	19, W. & Harwood	1,056 60					
	23, Samuel Meeker	1,454 07					
	24, A. H. Inskeep	263 40					
	27, Lapseley & Akin	193 09					
	29, J. Justice & Co.	1,879 81					
			4,846 97				
30	To postage this month - -		1 01				
Nov. 1	To sundry goods sent by Thomas T. Barr - - -		2,660 60				

	2	To cash paid his bill at 15 days to Thomas Prather - -		750 00		
		To sundry goods from Lapseley & Akin on my account, per his order to Charles Ford and Bazil Brashear, 26th February last -		104 77		
Dec.	20	To cash paid James Henderson, carriage of 11 barrels ginseng from Wheeling - -		41 10		
	31	To porterage of ginseng received from New Orleans in June, 1815, and hoisting in loft	1 50			
		Do. sundry loads received in January and February last, from wagons to scales, and back	8 33			
		Weighing above, per Tenus & Annesley's account	4 43			
		Hoisting ginseng rec'd from wagons into the loft in winter and spring, 1805	3 10			
		Do. received from do. in the last winter and spring	7 56			
				24 92		
1807.						
Jen.	81	To cash paid his bills,				
		4, Favor of D. Lapseley	426 75			
		7, John Evans	518 71			
		16, Thomas Prather	439 00			
				1,384 46		
		To postage this month - -		1 04		

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ACCOUNT—Continued.

1807.				1807.		
Feb. 28	To cash paid hauling sundry loads of ginseng from Wheeling,			March 31	By cash neat proceeds of the following notes:	
	3, James Mays 1 load 120 51				12, L. Clapier's, 60 days,	
	7, John Week 2 do. 139 02				1,500 dollars 1,484 25	
	Irvin Howell 1 do. 60 99				14, Do. 3,000 dollars 2,894 00	
	11, Stephen Keifer 1 do. 82 77				23, His own note at 60 days, to John Nixon,	
	John K. Gaston 1 do. 67 88				2,000 dollars 1,978 67	
	14, Peter Hartman 1 do. 57 66					$6,356 92
	21, James Johnston 2 do. 103 74				By R. H. Wilcocks and Co. for	
	Samuel Poole 2 do. 130 97				4,052 lbs. clarified ginseng, 23d	
		$763 46			May last, payable in 12 months,	
	To amount of goods per bill, payable in 15 months - -	7,055 63			at 70 cents - - -	2,836 40
	To postage of letters for him and			April 20	By this sum settled with J. S. Duvall on my account - -	106 50
	M. Keir - - -	1 25			By his endorsements of my notes	
March 19	To cash paid John Ray, carriage of 9 barrels of ginseng from			21	19th ultimo, payable in 3 and 4 months, to Wm. Morton -	3,775 30
	Wheeling - - -	32 56			By his 2 notes in favor of F. West,	
23	To do. paid Baltz at 3 days by his order, for same sum advanced in Baltimore to Mr. Yewell	531 66			dated 28th February, payable in fifteen months; the one for $3,527 81, and the other for	
26	To do. paid him 100 00				$3,527 82 - - -	7,055 63
	Deduct this sum borrowed 10 00				By F. West's note 13th March,	
		90 00			1807, payable in 60 days to Jacob Justice & Co., settled by	
	To 20 Kentucky insurance, Short sold him this day, and ordered Thomas T. Barr to transfer to				W. Brashear - - -	897 30
	him at 85 per share - -	1,700 00				

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28	To my bills of this date at 60 days, in his favor, on James Weir 1,100 00 Martin Hawkins 500 00		1,600 00
31	To postage of letters to this month		
	To a water loan certificate transferred to him 100 00		
	Thomas Leiper's account 27th instant, 60 days 111 50		211 50
April 9	To amount of my account against Dennis Brashear & Co., sold 5th April, 1806 3,799 26 Do. 1 more 2,570 93		6,370 19
	To Hugh Cochran's account hoisting ginseng into the loft, storing, &c., in Feb. last 5 90 Porterage of goods 11th instant to Newcastle boat 1 92		7 82
April 21	To 6 months interest on 3,799 26, amount goods sold Dennis Brashear & Co. on 5th April, 1806, transferred to this account		113 97
	To 2 months' interest on my two notes, endorsed and to be paid by him; the one due 22d June, and the other 22d July next ensuing, for $3,775 50, the average time 2½ mos., at per ann.		47 19

ACCOUNT—Continued.

1807.			1807.		
April 21	To 1 month's int't on $2,836 40 credited 31st ult., but not due until 21st next month - -	$14 18	April 21	By this sum settled with John Allen on my account, by said W. Brashear - - -	$851 85
	To balance of interest due on his account current, per particulars furnished - - -	346 95		By 4 months' interest on $1,100, charged 28th ult., but not received until 23d August 22 00	
	To balance due by Walter Brashear & Co. per account this day transferred to this account -	4,677 58		3 mo. do. on $611 50, charged at same time, and not received then 9 17	
	To balance due this per contra, payable with interest -				31 17
				By balance due - - -	2,140 76

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PHILADELPHIA, *April* 21, 1807.

Errors and omissions excepted. FRANCIS WEST.

BARDSTOWN, KENTUCKY, *July* 13, 1808.

I acknowledge the above account to be correct, that I am justly indebted to Francis West in the sum of two thousand one hundred and forty dollars seventy-six cents, as therein stated.

WALTER BRASHEAR.

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In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Thomas M. Willing and Henry Nixon, executors of the last will and testament of John Nixon, deceased, defendants named in the bill of complaint of Walter Brashear to the amended bill of said complainant. These defendants, now and at all times saving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said amended bill, for answer thereto, or to so much as these defendants are advised is material for them to make answer unto, they answer and say, that they do not know or admit that the account marked A, filed with and referred to in the amended bill of the complainant, is a correct account of the ginseng and money in the hands of Latimer when the attachment issued; that said account purports to be an account of sales of ginseng by James Latimer on account of Walter Brashear, but whether it is a correct and true statement of such sales these respondents do not know or admit. And the respondent, Henry Nixon, saith, that he thinks he obtained an account of the sales of said ginseng, and also an account current with the complainant, from the said Latimer, some time in the year 1810, but whether the account referred to in the amended bill is the said account, or copy thereof, he cannot say, but that he verily believes the amount of said sales was carried to the credit of the complainant in the account current, which he thinks did not exceed two thousand dollars, was all that said Latimer admitted to be in his hands when the attachment issued. These defendants therefore pray that the complainant may be required, if it be material to produce proof of said account, and also of the actual state of the account between the said complainant and the said James Latimer, at the time when the attachment issued. And further answering, these defendants say, that they do not admit, but do expressly deny, that by the laws of the State of Pennsylvania the plaintiffs in the attachment had any right or power to demand or obtain from the said Latimer any security for the forthcoming of property or funds in his hands subject to the said attachment, agreeably to the final order of said court, or to demand or obtain the withdrawal of the funds or property attached, and its safe deposite; and they also deny that any measures other than those which were taken by them could have been taken, by means of which the parties would have been saved from injury by the failure of Latimer; and they do aver, that all reasonable and usual attention was bestowed by them in the matter of said attachment, and that they did not, in contempt or violation of any duty, permit the fund to remain subject to the management of said Latimer; and further, these respondents do deny that they ever assented to, or in any way or manner encouraged, the exportation of said ginseng; and they do also deny that the attachment issued by them was levied, or any proceedings had therein, under the advice, or by the procurement, or with the participation of Francis West, in any way or manner whatever; and they also do deny that they have been guilty of any negligence in relation to the recovery of said money, without that, that there is any other matter or thing in the said amended bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or traversed or denied, is true; all which matters and things these respondents are ready to aver, maintain, and prove, as this honorable court shall award, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

THO. M. WILLING.
HENRY NIXON.

Thomas M. Willing and Henry Nixon, the respondents named above, being duly sworn according to law, on their oaths severally say, that the several matters and things contained in the foregoing answers, so far as they relate to their own knowledge, are true, and all other matters therein they believe to be true.

THOMAS M. WILLING.
HENRY NIXON.

Sworn to, the 15th day of November, A. D. 1821, before me,
RICHARD PETERS,
Judge Pennsylvania district, U. S.

Afterwards, to wit, on motion of the complainant aforesaid, by his counsel, leave is given him to file an amended bill herein, which is done accordingly, and, by consent, this cause is to stand on the issue docket for trial. And it is ordered, that the defendants answer on or before the first day of the next term of this court; and leave is given the parties to take depositions generally, in or out of the district, before any two justices of the peace, notary public, or mayor of any city, upon giving to the other legal notice of the time and place of taking the same. Which amended bill is in the words and figures following, to wit:

To the honorable the Judges of the circuit court of the United States for the Kentucky district, in chancery sitting:

Humbly complaining, showeth unto your honors, your orator, Walter Brashear, a citizen of the State of Kentucky, by way of amendment to his bill heretofore exhibited against Francis West and others, that, at the time when your orator became special bail of the defendant West, at the suit of Anderson, he had no knowledge of the assignment and delivery of his two notes, in the bill and proceedings mentioned, to John Nixon, nor of the general assignment made by the said West to Samuel Mifflin, John Lapseley, and Henry Nixon, referred to in those proceedings; and your orator charges, that the said two notes were so assigned to the said John Nixon, to secure and indemnify him in a very considerable sum due from the said West to him, which your orator calls upon the said Nixon's executors to state, show, and prove, and also to say whether they have any other and what indemnity for it, whether it has not been paid. And your orator charges, that the said general assignment, made by the said West to the said Mifflin and others, is fraudulent and void, that it was made to defraud the creditors of the said West, to give undue advantage to some, to the prejudice of others of them. That, by the laws of Pennsylvania, the plaintiffs in the said attachment were authorized and bound to see that the money and effects attached in the hands of Latimer were always in power of the officer levying the attachment, or to demand of the garnishee security for the production of the said money and effects, and that the plaintiffs altogether failed to require that the said money and effects should be so placed in the power of the said officer, or to demand from the garnishee such security as aforesaid. And your orator further charges, that the two notes charged *in* your orator in the account of James Latimer, and which is referred to in the answer of Francis West as exhibit A B, amounting together to $5,610 84 cents, remain wholly unpaid, and have never been satisfied.

BIBB, HAGGIN, & CLAY

And afterwards, to wit, at the May term of the court aforesaid, in the year 1823, came the defendants, Samuel Mifflin, John Lapseley, and John Nixon, and filed their answers to the complainant's amended bill, to wit:

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Samuel Mifflin and John Lapseley, two of the assignees of Francis West, to the complaint of Walter Brashear, by way of amendment to his bill, heretofore exhibited against Francis West and others. These defendants, reserving to themselves all benefit of exception to the said amendment of said bill, for answer thereunto, or so much thereof as they are advised they are bound to answer unto, they answer and say, that they do not admit, nor do they believe to be true, that, at the time when the complainant became special bail for the defendant West, at the suit of Anderson, he, the said complainant, had no knowledge of the assignment and delivery of his two notes to John Nixon, nor of the general assignment made by said West to Henry Nixon and these defendants; that these defendants have understood, and verily believe, that the said notes of the complainant were assigned and delivered by the said Francis West to the said John Nixon, for the purpose of securing to the said John Nixon the payment of a debt, amounting to two thousand six hundred and sixteen sixty-five cents, due from the said Francis West to the said John Nixon, and that the whole of the said debts, excepting the sum of two hundred and twenty dollars and fifty cents received from his assignees under his assignment, still remains due and unpaid; and that these respondents have no knowledge of any indemnity or security holden by the executor of said Nixon, or any other person, for the payment of said debt. These defendants further answer and say, that the general assignment made by the said Francis West to Henry Nixon and these respondents, and referred to in the said amended bill, was not fraudulent and void, was not made to defraud the creditors of said West, or any of them, or to give any undue advantage to some, to the prejudice of others of them, as is alleged by the complainant, but on the contrary, as these respondents are advised by counsel, and verily believe, the said assignment was fair and legal in all its provisions, and in all respects a perfectly valid instrument, and has never been denied or questioned to be such in the State of Pennsylvania. And they do further answer and say, that they do not admit, but do expressly deny, that, by the laws of Pennsylvania, the plaintiffs in the said attachment, referred to in said amended bill, were authorized and bound to see that the money or effects attached in the hands of Latimer, were always in the power of the officer levying the attachment, or to demand of the garnishee security for the production of the said moneys and effects. And these respondents further answer and say, that they are advised by counsel, and do verily believe, that there existed no right, power, or authority, by the laws of Pennsylvania, in the plaintiffs, to cause the money and effects so attached to be placed in the custody of the law, or withdraw the same from the hands of said Latimer, or to cause him, said Latimer, to give security therefor. And these respondents further say, in answer to said amended bill, that they have been informed, and verily believe, that the two notes charged to the complainant in the account of James Latimer, and referred to by the complainant in his said amended bill, have been paid and satisfied by the said Latimer, and now in his hands.

JOHN LAPSELEY.

Samuel Mifflin, one of the respondents, being duly sworn according to law, saith, that the several matters and things written in the foregoing answer, so far as they relate to his own knowledge, are true, and so far as they relate to the knowledge of others, he believes them to be true.

SAMUEL MIFFLIN.

Sworn and subscribed to, the 18th day of April, A. D. 1823, before me,

RICHARD PETERS,

Judge Penn. dis. U. S.

John Lapseley, one of the defendants, being duly sworn according to law, saith, that the several matters and things contained in the foregoing answer, so far as they relate to his own knowledge, he believes to be true, and so far as they relate to the knowledge of others, he believes them to be true.

JOHN LAPSELEY.

Sworn and subscribed to, the 22d day of April, A. D. 1823, before me,

RICHARD PETERS,

Judge of the Penn. dis. U. S.

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Henry Nixon, sole surviving executor of John Nixon, deceased, and one of the assignees of Francis West, to the complaint of Walter Brashear, by way of amendment to his bill, heretofore exhibited against Francis West and others. This defendant, reserving to himself all benefit of exception to the said amendment of said bill, for answer thereunto, or to so much thereof as he is advised he is bound to answer unto, he answereth and saith, that he does not admit that at the time when the complainant became special bail for the defendant West, at the suit of Anderson, he, the said complainant, had no knowledge of the assignment made by the said West to Samuel Mifflin, John Lapseley, and Henry Nixon, but he, this defendant, believes and avers, that at the time the complainant did well know that his said two notes had been assigned and delivered to John Nixon, and that Francis West had made his general assignment to Samuel Mifflin, John Lapseley, and Henry Nixon. And this respondent further saith, that the two notes of the said complainant, referred to as above, were assigned and delivered to John Nixon soon after they were drawn, and with the knowledge of the complainant, who was present at the time when the said notes were so assigned, for the purpose of securing to the said John Nixon the payment of a debt, amounting to two thousand six hundred and sixteen dollars sixty-five cents, due from the said Francis West to the said John Nixon, the whole of which, with the interest thereon, still remains due and unpaid, excepting the sum of five hundred and twenty dollars and fifty cents received from his assignees under his assignment. And this respondent further says, that no other indemnity or security than this is holden by or for the estate of John Nixon for said debt. And this respondent further says, that the general assignment made by the said West to the said Mifflin and others, referred to in the saidamended bill, is not fraudulent and void, that it was not made to defraud creditors of the said West, or to give any undue advantage to some, to the prejudice of others of them; that, by the laws of Pennsylvania, the plaintiffs in the said attachment mentioned were neither authorized nor bound to see that the money nor effects attached in the hands of Latimer were always, or at any time, in the power

of the officer levying the attachment, or to demand of the garnishee security for the production of the said money and effects. And this respondent is advised by counsel, that there existed no right, power, or authority, by the laws of Pennsylvania, in the said plaintiffs, to cause the money and effects so attached to be placed in the custody of the law, or withdrawn from the hands of said Latimer, or to cause him, the said Latimer, to give any security therefor. And this respondent further saith, that the paper writings hereto, marked A and B, are true copies of the original notes now in the hands of James Latimer, which this respondent has seen and compared with copies; that the said notes have been paid by said Latimer, and fully satisfied, and are the same notes charged in James Latimer's account; that, as this respondent has been informed and believes, the said notes were given by said Latimer in payment of a debt of said Brashear, for whom the said Latimer was bail, and which payment was made by the instructions or with the knowledge and consent of said Brashear. This respondent further says, that the said notes he believes were paid at maturity, and that such payment is perfectly well known to said Brashear. This respondent further says, that, agreeably to an act of the General Assembly of the Commonwealth of Pennsylvania, which was in full force at the time the said notes were given by the said Walter Brashear to Francis West, and by said West assigned to John Nixon, and which remains in full force to this time, the said notes were holden by the endorser, discharged by any claim of defalcation or set off by the drawer thereof, and the said endorser was entitled to recover against the drawer of such sums as on the face of said notes appear to be due.

HENRY NIXON.

Henry Nixon, the respondent in the foregoing answer, being duly sworn according to law, saith, that the several matters and things contained in said answer, so far as they relate to his own knowledge, are true, and so far as relates to the knowledge of others, he believes to be true.

HENRY NIXON.

Sworn and subscribed to, the 22d day of April, A. D. 1823, before me,
RICHARD PETERS,
Judge Penn. dist. U. S.

The following are the exhibits referred to in the foregoing answer, to wit;

(A.)

5—S *July*, $3,672 78. PHILADELPHIA, *5th January*, 1809.
Dollars 3,672 78.

Six months after date, I promise to pay, without defalcation, to the order of Joseph Slovan, thirty-six hundred seventy-two dollars and seventy-eight cents, value received.

JAMES LATIMER.

No. 3,212.

On which is the following endorsement, to wit: Pay to the order of Mr. George Simpson.

(B.)

Dollars 1,938 06. PHILADELPHIA, *5th January*, 1809.

Six months after date, I promise to pay, without defalcation, to the order of Joseph Slovan, nineteen hundred and thirty-eight dollars and six cents, value received.

JAMES LATIMER.

On which note is the following endorsement, to wit: "Jos. Slovan, R. B. Penn. Re'd date."

In the circuit court of the United States for the Kentucky district, in chancery. The answer of Francis West to the complaint of Walter Brashear, by way of amendment to his bill heretofore exhibited against the said Francis West and others. This defendant, reserving to himself all benefit of exception to the said amendment of said bill, for answer thereunto, or to so much thereof as he is advised he is bound to answer unto, he answers and says, that he does not admit, that, at the time when the complainant became special bail for the defendant, at the suit of Anderson, he, the said complainant, had no knowledge of the assignment and delivery of his two notes to John Nixon, nor of the general assignment made by this respondent to Samuel Mifflin, John Lapseley, and Henry Nixon; but, on the contrary, this respondent avers and declares, that the complainant did well know at the time he entered said special bail, which was when this respondent was in Kentucky, in September and October, 1808, that said assignment to Samuel Mifflin, John Lapseley, and Henry Nixon, which was made in April, 1807, had been made, and that he, the complainant, did also well know that his said two notes had been assigned and delivered by this respondent to John Nixon; and that the said complainant was, at the time of said assignment and delivery of said notes, and for time before and after, living with the family and in the house of this respondent, and was actually and personally acquainted with the fact of said assignment. And this respondent further saith, the said two promissory notes of the complainant, dated at Philadelphia, the 28th day of February, 1807, payable, without defalcation, to the order of this respondent, the one for three thousand five hundred and twenty-seven dollars and eighty-two cents, another three thousand five hundred twenty-seven dollars and eighty-one cents, each at fifteen months after date, and making the sum of seven thousand fifty-five dollars and sixty-three cents, were so assigned and delivered in the month of April, 1807, before the respondent's said general assignment to Mifflin and others, on the 21st of April, 1807, to John Nixon, who is since deceased, as a collateral security for a debt due by this respondent to said Nixon, amounting to two thousand six hundred and sixteen dollars and sixty-five cents, and that such assignment was made with the knowledge and approbation of said complainant; that this respondent has been informed that his said assignees have paid to said Nixon, or his executors, five hundred and twenty dollars fifty cents, and no more, leaving a balance now due of two thousand ninety-six dollars fifteen cents; and that this respondent has no knowledge of any indemnity or security of any other nature or kind holden by the executors of said Nixon, or any other person, for the payment of said debt. This respondent further says, that the general assignment made by him to Henry Nixon, Samuel Mifflin, and John Lapseley, and referred to in the said amended bill, was not fraudulent and void, was not made to defraud the creditors of this respondent, or any of them, or to give any undue advantage to some, to the prejudice of others of them, as is alleged by the complainant, but, on the contrary, he avers and declares, that the said assignment was fair and lawful in all its provisions, and in all respects a perfectly valid instrument, and has never been denied or questioned to be such in the State of Pennsylvania. And this respondent further answers and says, that he does not admit to be true, but does expressly deny, that, by the laws of Pennsylvania, the plaintiffs in said

attachment referred to in said amended bill were authorized or bound to see that the money and effects attached in the hands of Latimer were always in the power of the officer levying the attachment, or to demand of the garnishee security for the production of the said money and effects. And he further says, that he has been informed and believes, that, in February, 1809, the said James Latimer caused an attachment to be levied at his own suit, in his own hands, as garnishee, against Dr. Brashear, and obtained judgment upon it in 1809, and that the attachments at the suit of the executors of Nixon and of the assignees of this respondent, issued subsequently to the attachment of said Latimer. And this respondent further says, that he, this respondent, has seen the two notes charged to the complainant in James Latimer's account, mentioned in said amended bill, in possession of said Latimer, and that he avers he is informed, and verily believes, the said notes were paid and satisfied by said when they fell due.

FRAN. WEST.

Francis West, the respondent in the foregoing answer, being duly sworn according to law, says, that the several matters and things contained in the said answer, so far as they relate to his own knowledge, are true, and so far as they relate to the knowledge of others, he believes they are true.

FRANCIS WEST.

Sworn and subscribed to, the 23d day of April, A. D. 1823, before me,

RICHARD PETERS,
Judge of Penn. dist. U. S.

And afterwards, it is ordered by the court, that this cause remain on the issue docket. And on motion of the defendants aforesaid, by their counsel, it is ordered that the *defendants* reply to the answer of the defendants on or before the first day of August next.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1824, (until which time this cause was continued,) came the complainant, and replies generally to the answer of Francis West, and, on his motion, this cause is continued until the next term.

And afterwards, to wit, at the May term of the court aforesaid, and year 1824, on motion of the complainant, by his counsel, leave is given him to amend his bill, and also leave to take the deposition of Francis West, one of the defendants, before any two justices of the peace, notary public, or mayor of any city, subject, however, to all legal exceptions; which amendment is in the words and figures following:

To the honorable the Judges of the court of the United States for the seventh circuit, Kentucky district, in chancery sitting:

Your complainant, Walter Brashear, as an amendment to his bill in chancery, now depending against Francis West and the executors of John Nixon and others, states, that he is informed, and believes, and charges, that the said decedent, John Nixon, was, at the time the debt in his former bill mentioned was contracted with said Anderson, a secret partner of said Francis West; that said debt to Anderson arose, and was contracted for and on account of, and during the partnership between said Francis West and said Nixon, and that said Nixon and his representatives are consequently bound in law and in equity to pay and satisfy your orator out of the estate and as-

sets of said Nixon, the debt, interest, and costs, which your orator paid to said Anderson, as aforesaid set forth in his former bill. Your orator states, that his debt to said West was contracted before he became the special bail of said West at the suit of Anderson, and that debt so owing by your orator to said West was one prominent inducement to your orator undertaking for said West as his bail, looking to that fund in his own hands as indemnity in case he should become ultimately responsible to said Anderson for said West. Your orator does not know when the said partnership between the said West and said Nixon commenced, nor when it terminated, but that the said Nixon was the father-in-law of said West; and he is induced to believe that said partnership existed at the time and before your orator's debt to West was contracted, and that the debt from your orator to said West was a debt to the said partnership: that the assignment of the debt of your orator to said Nixon, whereupon and for which the executors attached your orator's property in the hands of said James Latimer, had been made to said Nixon in consequence of and by reason of the partnership between said West and Nixon, and upon no other consideration which was valuable, but also connected with this other consideration, that said West had married the daughter of said Nixon, and therefore there was another strong inducement to said West to assign over a debt of your orator to said Nixon, as by doing so the said Nixon would be, in effect, a trustee for said West, and said Nixon would be thereby enabled to make a more ample provision for his daughter, the wife of said Francis West. And your orator is informed, and believes, and further charges as fact, that said West, and his wife, the daughter of said Nixon, are now enjoying a large fund, provided and settled on said West's wife by her father, the said John Nixon, deceased. Your orator is informed that the executors of said John Nixon are in possession of the books of said Nixon, and that said books will enable said executors to state the fact of the interest had in the mercantile transactions of said West, and that the said books of said Nixon will exhibit the fact of a charge therein of Nixon's profits for goods, wares, and merchandise, sold by said West during the said secret partnership existing between said West and Nixon; and your orator well believes that the existence of and duration of said partnership between said West and Nixon is well known to said West and said executors of said John Nixon, and ascertainable by the inspection of their books and accounts, kept respectively by said West and by said decedent Nixon; he is informed and believes that when said West came to Kentucky, and at the time when he was arrested at the suit of said Anderson, and when your orator became his bail as aforesaid, he, the said West, came for the purpose of settling all the interests and concerns of said West and Nixon, and that notwithstanding said West assigned over the debts and effects of said concern, yet he, the said West, continued to be and was the manager of said concern, and had full power and authority, by a written power of attorney from said Nixon or his executors, for so doing.

To the end that said defendants may answer all and singular the premises in the amended bill as fully and as particularly as if every suggestion herein contained was repeated by way of interrogatories, and especially that said Francis West and said executors of said John Nixon, deceased, may each set forth and say if said Nixon, deceased, and said West, were not partners in trade; when did that partnership commence; when did it end; was not the business transacted in the name of said Frs. West alone, whilst said Nixon had no interest in the profits or losses, or in the profits of said business,

so conducted in the name of said West alone; what was the nature and extent of said decedent's interest as to profit or loss in said business of said West; when did the interest of said decedent begin, and when did it cease; and why and wherefore, and by what arrangement did it cease; did not the books of said Nixon and of said West, both as one or the other, show a charge in favor of said Nixon, and against said West, of profits for goods, wares, and merchandise, sold by and under the contract of said West; do not the said executors of said West know, or do they not believe, from information which they believe to be correct, that said decedent Nixon was a secret partner of said West; did not the said debt to Anderson grow out of the said concerns of said partnership of said West and Nixon; had not said West a power of attorney or authority from said decedent Nixon, or from his executors, as before herein suggested; where is that power; and that the defendants be compelled to produce and show forth the original, or a copy of it, and to explain and set forth the nature and extent of that power, and from whom. And to the end that your orator may have such general relief in the premises as his case shall require, and as equity shall dictate, he prays that the defendants be compelled to answer this amended bill, &c. And as in duty, &c.

HAGGIN & BIBB, *for complainants.*

May term, 1824. Sworn to in open court by Walter Brashear.
Att. JNO. H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, on motion of the complainant, it is ordered that an injunction be granted him, staying all further proceedings on a replevin bond, executed to the defendant West by the said Walter Brashear and Robert R. Barr, bearing date the 19th day of March, 1822, in the penalty of $13,000, to be discharged by the payment of $6,537 39, with interest from day of March, 1822, till paid, and also a judgment in this court in favor of said West against said Brashear, for the sum of $3,527 81, with interest from 28th May, 1808, till paid, and costs, be stayed until the matter can be heard in equity, upon said Brashear entering into bonds in the penalty of $10,000 each, with Thomas T. Barr and Robert R. Barr, his security, conditioned according to law.

And afterwards, to wit, at the October term of the court and year last aforesaid, on motion of the defendants, West, Lapseley, and Mifflin, leave is given them to file their answers, which is done accordingly, and cause to remain on the issue docket; which answers are as follows, to wit:

In the circuit court of the United States for the district of Kentucky, sitting in chancery. The answer of Francis West, one of the defendants named in the bill of complaint of Walter Brashear, to the further amended bill of said complainant. This defendant, now and at all times saving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiencies in the said complainant's further amended bill, for answer thereto, or so much as this defendant is advised is material for him to make answer unto, answers and says, that early in the year 1804 John Nixon furnished this defendant with the sum of $6,200, or thereabout, received at sundry times, to be employed in the purchase of goods at auction, with the agreement and understanding between them that the said John Nixon should have one-half of the profits which should be made upon the sales of such goods; that the purchases of goods

under this agreement then commenced, and continued until about the last of the year 1805, and said purchases were always for cash, and the articles purchased paid for: that in consequence of the uncertainty which attended the collection of the debts made by sales of said goods, the said John Nixon agreed with this defendant to relinquish his interest in the profits, and in lieu thereof to charge the defendant with bank interest for the money so endorsed. That on the 1st of March, 1806, the said John furnished this defendant with an account of said interest, which amounted to eight hundred and seventy-five dollars and five cents, and with that sum he was credited by this defendant on his books on the 31st day of the same month, and the whole gain on the purchases and sales of said goods was carried to the credit of profit and loss on the books of this defendant. And this defendant saith, that except the concern just stated, there never was any partnership, joint connexion, concern, or interest, in trade or business, by or between the said Nixon and himself; and that the said John Nixon never had any interest whatever in any other part of the business transactions or dealings, of this defendant. And this defendant, further answering, saith, that the defendant's account with Jordan and Anderson, out of which arose the account with George Anderson, commenced in September, 1806, after the joint concern between the said John Nixon and this defendant, hereinbefore stated, was fully closed; and he also says, that the said debt to Anderson did not grow out of the concern, or any of its transactions, and that the said John Nixon never had the smallest interest in or connexion with said debt, or with any transaction whatever between the said George Anderson and this defendant. And he further says, that the debt from the complainant to defendant was not a debt to John Nixon and this defendant, or to the said joint concern between them, and that was not assigned to said Nixon by reason of said concern, as is alleged in complainant's further amended bill, but that said debt was assigned to said Nixon upon the valuable and bona fide consideration, already stated in this defendant's previous answers to the bill of complaint, and that wholly unconnected with any consideration or inducement arising out of the marriage connexion subsisting between the said John Nixon and this defendant. And this defendant, further answering, saith, that, in the spring or summer of 1808, he was in Kentucky, and received from the said John Nixon a power of attorney to collect a debt owing from Hart and Bartlett, and another debt from Hart and Bartlett was originally due to this defendant, but had been assigned by him to said John Nixon; and the said power of attorney was at the request of this defendant, in consequence of the refusal of the said debtors to settle with him without such authority from the said John Nixon, and it is recorded in Fayette county, in said State of Kentucky. And the said defendant, further answering, saith, that the paper writing hereto annexed, marked A, is a just, full, and true copy of the account of said John Nixon, taken from the defendant's books by himself; that the balance of said account, as is there stated on said books, is $2,496 77; that the difference between the balance and the sum stated by this defendant in his former answer to be due from this defendant to the said John Nixon, *from this* . That defendant in his former answer stated the balance according to the decision of the referees to whom the account was submitted, by which decision the balance was found to be $2,616 65 cents, an account of which was received from this defendant's assignees $520 50 cents, being the balance $2,096 15 cents, as stated in his former answer by this defendant. This defendant is unable to state

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in what particular the referees made the balance different from the balance on this defendant's books, but he believes it has been by his disallowances of some item or items charged in his account, or by charging some item or items not credited to the said John Nixon in said account. And this defendant, further answering, saith, that the complainant, in addition to the promissory notes given by him to this defendant, and by this defendant endorsed to the said John Nixon, amounting together to $7,055 63 cents, was indebted to this defendant in an admitted balance of account of $2,140 76 cents, as will appear by his account current, and acknowledgment of the complainant therein, on which a copy is hereto annexed, marked B, and which this defendant prays may be taken as part of this his answer; that the balance of said account so admitted remains justly due, with the interest thereon, and is of right belonging to and recoverable by this defendant's assignees; and if the said complainant has any just or equitable claim to an allowance of the amount alleged to be paid by him as the special bail of defendant to George Anderson, it ought to be made in the first instance out of the said admitted balance of account to the extent thereof, and against the said notes only the amount which may remain thereafter unpaid. And as to all and every other of the matters and things alleged in the said bill of complaint, this defendant saith, that so far as he knows, or is informed, or believes, they are true. Without that, that any other matter or thing in the complainant's said further amended bill contained, material for the defendant to make answer, and not herein and hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant; all which this defendant is ready to aver, and maintain, and prove, as this honorable court shall award; and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

FRAN. WEST.

Francis West, being duly sworn, saith, that the matters contained in the foregoing answer, so far as it concerns his own acts and deeds, are true of his own knowledge, and that what relates to the acts and deeds of any other person or persons, he believes to be true.

FRAN. WEST.

Sworn to, the 8th day of October, A. D. 1824, before me,

RICHARD PETERS,

One of the Judges of the Circuit Court of U. S. for the district of Pennsylvania.

EXHIBIT

Dr. *Mr. John Nixon in*

1803.				
Sept. 27	To cash paid him - - - -			$100 00
1804.				
May 17	1 piece 6-4 cambric muslin, figured -			8 40
31	sundry goods in February and April -			17 28
August 31	cash received by him on my account from Clement Biddle, by order of General Wilkinson - - - -			4,394 40
Sept. 30	do. paid taxes on his two tracts of land in Northumberland county, and half expenses there - - -			24 10
Dec. 31	1 piece furniture dimity -	11 70		
	23¾ yds. princess stuff, from Jas. West - - -	4 57		
				16 27
1805.				
May 11	3 pairs Angola worsted hose - -			3 30
June 8	James West, drawing deed of land, &c. -			7 75
Nov. 9	cash paid for an English cheese -			6 00
	John Jordan, jr., bill on him at 10 days in my favor, settled with him in account -			475 62
30	1 piece brown Irish sheeting - -			9 01
Dec. 21	1 do. Irish linen, 1 piece do. - -			48 35
1806.				
Feb. 13	cash paid my note 12th December, at 60 days, to him, on account - -			2,000 00
27	do. do. 26th December, do.			2,200 00
March 24	do. do. 20th January, do.			2,000 00
June 30	2 pieces linen and 6 pairs Angola hose -			51 10
1807.				
Jan. 5	cash paid him, loan of 29th ultimo -			500 00
March 31	Sanderson & White's bill, at 60 days, on N. Michincloss, of New York, accepted 12th inst., given to him on account			1,250 00
April 11	this sum due by Hart and Bartlett, and assigned to him - - -			7,376 34
	Balance due J. N. -			2,496 77
				$22,984 69

A.

account with Francis West. Cr.

1803.			
Aug. 24	By cash from Samuel Paynter on his account		$100 00
1804.			
Jan. 31	Do. on account 21st - - 200		
	26th - - 1,000		
	30th - - 800		2,000 00
Feb. 29	Do. do 6th - - 600		
	7th - - 1,600		
	27th - - 500		
	28th - - 1,500		4,200 00
March 31	Do. do. 3d - - 500		
	8th - - 1,000		1,500 00
July 31	Do. from him 3d, for sundries in February, April and May	25 68	
	received on account, 27th	1,000 00	1,025 68
August 31	Do. on account 14th -	2,000 00	
	21st, bal. of money rec'd from C. B. account Gen. Wilkinson	1,394 40	3,894 40
Dec. 31	error in charging this sum per contra, it being settled with J. West - -		4 57
1806.			
March 31	interest account, for amount of interest due him on the money advanced me in the year 1804, per account dated and furnished 1st instant - - -		873 05
Dec. 29	cash borrowed from him - -		500 00
1807.			
April 20	profit and loss, for loans from him September, October, and Nov'r, 1801	150 00	
	Do. in February and April, 1802	100 00	
	this sum paid by him in May, 1801, exp of com. bankruptcy case	375 89	625 89
	his following endorsements on my notes:		
	February 9th, 60 days,	1,250 00	
	16th, -	1,814 44	
	23d, -	1,000 00	
	March 2d, -	1,250 00	
	19th, -	1,250 00	
	April 6th, -	1,250 00	7,814 44
	my note 14th ult. at 60 days, given to Jos. Smithson, in full Smithson, Oates, and Rich's account for goods guarantied by said Nixon - - - -		946 66
			$2[illegible] 59

EXHIBIT

DR. *Walter Brashear in*

1805.			
Nov. 30	To amount of sundry goods sent by Thomas T. Barr - - - -		$3,963 74
	To an error in extending 14 pieces blue ground prints, 226 for 340 yards, difference 114 yards, at 1*s*. - - £17 11 6		46 87
	To 2 pieces carpeting, 144 yards, at 9*s*. 6*d*. and 4 coverlets, at 33*s*. 9*d*. - - -		187 53
Dec. 12	To cash paid Geo. Gibson, carriage of 11 barrels of ginseng from Pittsburg - -		41 52
13	To do. paid John Henderson, do. 32 barrels from do. - - 104 97		
	Moses Sprowle, do. 12 do. do. 56 67		
			161 64
16	To do. paid Hugh McCartney, carriage of 15 barrels of ginseng from Pittsburg -		57 84
17	To do. paid Geo. Wilson, do. 13 casks and 1 bag - - - 56 25		
	Adam Smith, do. 13 do. and 2 do. 57 02		
			113 27
26	To do. paid Jos. Howard, do. do. 18 do. from Wheeling - - - -		58 65
27	To cash paid Bernard McManes, 18 do. -		57 64
28	To do. paid Daniel Danville, balance of carriage from do. on 37 casks - -		102 28
31	To postage of letters from Dennis Brashear and W. Gibson, with receipt for ginseng		1 10
1806.			
January 9	To cash paid Peter Keifer, freight on 22 casks from Wheeling - - - -		90 44
17	To do. paid John Wayle, hauling 2 loads from do. - - - -		123 77
21	To do. paid Geo. Manning, 1 load from do.		74 09
	John Mayes, do. 1 load from do. -		92 47
26	To do. paid John Glendining, do. load from do. - - - - -		80 00
27	To do. paid his bill at 60 days, in favor of Annesly and Hill - - - -		200 00
31	To do. paid postage of letters from him, and his brother's letters, with receipt for ginseng - - - - -		1 20
February 1	To do. paid Jos. Keller, hauling one load ginseng from Wheeling - 88 16		
	Do. Jacob Keller, do. - - 50 00		
			138 16
15	To do. paid John Flinnman, hauling 26 barrels from Wheeling, short paid - -		4 83
18	To do. paid himself - - - -		1,500 00

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B.

account with Francis West. Cr.

1806			
February	By cash received from him this month:		
	17th, - - -	$2,000 00	
	21st, - - -	2,000 00	
	26th, - - -	2,000 00	
	28th, - - -	2,000 00	
			$8,000 00
March 5	By cash received from him - - -		1,000 00
17	By do. neat proceeds L, note 1st instant - - -	1,676 35	1,662 94
27	By do. from him - - - -		300 00
31	By do. neat proceeds L, note 1, at 60 days - - -	1,600 00	1,590 68
April 12	By sundry goods from him - - -		3,040 07
30	By Lapseley and Ikin, for Jos. Coppinger's 2 bills £70 Irish sterling, equal to £64 12*s.* 4*d. stg.* at par - - - -		287 18

EXHIBIT B—

Dr.

1806.				
Feb.	22	To cash paid himself - - -		$40 00
	25	To do. paid James Eubs, hauling 1 load of ginseng from Wheeling - - -		75 91
	26	To do. paid himself 2 checks - -		420 00
		To do. paid Bazil Wiggins, hauling 1 load from Wheeling - - - -		57 50
		To do. paid himself - - -		30 00
	27	To do. do. in 2 checks - -		700 00
	28	To postage of letters this month - -		1 35
March	3	To cash paid N. Deihl, jr., per notarial copy of A. Porter, jr's. note - -		1 25
	31	To do. paid him this month, viz:		
		3, - - - -	55 00	
		6, - - -	100 00	
		8, - - -	200 00	
		12, - - -	500 00	
		15, - - -	1,044 75	
		19, - - -	300 00	
				2,199 75
		To postage of letters from him to my care, this month - - - -		4 97
April	13	To sundry goods, per bill - - -		2,740 82
		To my acceptance this day of his bill, favor Irvin and Beatty - - -		340 39
	15	To cash paid R. Allen, hauling 12 barrels and 1 keg ginseng from Wheeling - -		36 15
	30	To cash paid him at sundry times this month:		
		11, - - -	150 00	
		18, - - -	100 00	
		19, - - -	100 00	
		21, - - -	30 00	
		22, - - -	50 00	
		23, - - -	200 00	
		24, - - -	500 00	
		26, - - -	200 00	
		28, - - -	200 00	
		29, - - -	992 77	
				2,522 77
		To this sum from Thomas Jones, paid on my account - - - - -		120 00
		To ½ piece cambric for handkerchiefs -		6 90
		To postage of letters for him this month -		3 23
		To 1 doz. white sheep skins, paid T. and P. Kelly - - - - -		6 50
May	31	To cash paid his drafts this month, viz.		
		1, To Isaac Smith -	2,396 00	
		6, Aaron Denman -	393 00	

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Continued.

Cr.

1806.			
April 30	By Lewis Dupier's note 1st March, due 1—4 June - -	$4,425 45	
	By do. do. 1—4 March, do 1—4 July - - -	4,425 45	
	By do. do. 1—5 March, do. 1—4 August - - -	4,348 95	
			$13,199 85
May 7	By his check on Bank North America -		123 69
12	By Joseph Winter's acceptance paid this day		1,212 50
June 25	By cash per mail from T. and R. Barr on his account - - - -		500 00
August 6	By cash received from him per mail -		710 00
18	By do. from T. and R. Barr on his account -		500 00
Sept. 7	By Hart and Bartlett's bill, paid this day, remitted by T. and R. Barr on his account		1,000 00
Oct. 25	By cash paid Thomas T. Barr - -		1,046 85
Nov. 19	By do from T. and R. Barr - -		230 00
30	By 4 barrels crude ginseng, sold 12th March last, 362 lbs. at 38 cents - -		137 56

EXHIBIT B—

Dr.

1806.				
May 31	21, To Samuel Reynolds -	- 95 41		
	29, Wm. Crawford -	- 173 19		
				$3,057 60
	To postage this month -	- -		1 02
June 30	To cash paid his bills this month, to wit:			
	2, To G. Trotter - -	900 00		
	4, To Corp. Ellis & Shaws -	797 02		
	6, To Charles Ford -	363 29		
	9, To Walter Brashear -	463 67		
	10, To Joshua Lippincott -	692 70		
	18, To Isaac Justice & Co. -	82 60		
	27, To John Angers -	401 00		
	28, To Jacob Justice & Co. -	1,000 00		
				4,700 28
3	To cash paid his acceptance of P. & Smiley's draft - - -	2,220 00		
5	To do. Dennis Brashear & Co's bill	424 14		
				1,644 14
30	To postages this month -	- -		77
July 31	To cash paid his bills this month:			
	2, To Simon Gratz and Co.	2,053 93		
	3, To Corp. Ellis & Shaws	813 35		
	10, To Joshua Lippincott -	692 70		
	18, To Lapseley and Co. -	698 63		
	To Wm. Crawford -	500 00		
	19, To Waddington and Harwood	1,100 00		
	20, To Simon Gratz and Co.	773 17		
	21, To John Auchincloss -	379 43		
	23, To Isaac Smith -	2,358 35		
	25, To James Latimer, jr. -	295 00		
	29, To James Williamson -	179 35		
	To Isaac Springer -	109 67		
				9,953 58
	To postages this month -	- -		1 85
August 31	To cash paid his bills this month,			
	4, To John Dabordie -	311 56		
	11, To John McCauley -	1,176 00		
	18, To Cavender & Son -	1,216 16		
	19, To James H. Cole -	270 83		
	20, To Denman and Meeker	156 60		
	23, To John McCauley -	1,100 27		
	To Samuel Meeker -	1,169 55		
	25, To James S. Duvall -	894 36		
	26, To Isaac C. Jones & Co.	338 61		
	28, To Meeker & Baldwin -	400 30		
	To T. & P. Kelly -	216 80		
	29, To Alexander Henry & Co.	520 22		
				7,771 26

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Continued.

Cr.

1807.				
Jan. 13	By cash, neat proceeds my acceptance 10th instant his bill at 90 days	$1,587 21		$1,518 37
14	By do. do. do. 14th, 90 -	1,632 12		1,560 72
21	By do. do. do. 19th, 90 -	1,701 09		1,628 10
Feb. 26	By cash received from him, viz.			
	7, - - -	1,580 00		
	9, - - -	1,000 00		
	11, - - -	2,500 00		
	12, - - -	2,200 00		
	14, - - -	1,000 00		
	16, - - -	1,000 00		
	19, - - -	1,000 00		
	23, - - -	370 00		
				10,650 00
	By cash, neat amount of L. Dapier's note at 60 days - -	1,500 00		

EXHIBIT B—

Dr.

1806.				
August	31	To postage this month - - -		$2 31
Sept.	19	To cash paid his bill favor Wm. Crawford -		5 72
	30	To postage this month - - -		52
Oct.	25	To cash paid Thomas Bringhurst on his account - - - - -		25 00
	31	To cash paid his bills this month, viz.		
		19, To Waddington & Harwood	1,056 60	
		23, To Samuel Meeker -	1,454 07	
		24, To A. H. Inskeep -	263 40	
		27, To Lapseley & Ikin -	193 09	
		29, To Jac. Justice & Co.	1,879 81	
				4,846 97
		To postage this month - - -		1 01
Nov.	1	To sundry goods sent by Thomas T. Barr -		2,660 66
	2	To cash paid his bill at 15 days to Tho. Prather		750 00
	30	To sundry goods from Lapseley & Ikin on my account, per his order - - -		104 77
Dec.	20	To cash paid James Henderson, carriage of 10 barrels ginseng from Wheeling -		41 10
	31	To porterage of ginseng received from New Orleans in June, 1805, and hoisting in loft		1 50
		Sundry loads received in January and February last, from wagons to scales, and back -		8 33
		Weighing the above, per Tennis & Annesley's account - - - - -		4 43
		Hoisting ginseng received from wagons into the loft in winter and spring, 1805 -		3 10
1807.				
Jan.	31	Do. last winter and spring - - -		7 56
		To cash paid his bills,		
		4, Favor David Lapseley	426 75	
		7, John Evans -	518 71	
		16, Thomas Prather	439 00	
				1,384 46
		To postage this month - - -		1 04
Feb.	28	To cash paid hauling sundry loads ginseng from Wheeling,		
		3, John Mayes 1 load	120 51	
		7, John Week 2 do. -	139 02	
		Irvin Howell 1 do. -	60 99	
		11, Stephen Keifer 1 do. -	82 77	
		John Gaston 1 do. -	67 80	
		14, Peter Hartman 1 do. -	57 66	
		21, James Johnston 2 do. -	103 74	
		Samuel Poole 2 do. -	130 97	
				763 46

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Continued.

Cr.

1807.			
Feb. 26	By cash, neat amount my acceptance 14th ult. of his bill at 90 days, -	$1,632 12	$1,583 00
	By my bill 14th inst. on Wm. Gibson, favor G. Anderson, per his order - -		500 00
March 31	By cash, neat proceeds of the following notes:		
	12, L. Dapier's, 60 days, $1,500	1,484 25	
	14, Do. $3,000 - -	2,894 00	
	23, His note at 60 days, to John Nixon, $2,000 - -	1,978 67	
			6,356 92
	By R. H. Wilcocks and Co. for 4,052 lbs. clarified ginseng, 23d May last, payable in 12 months, at 70 cents - - -		2,836 40
	By this sum settled with James S. Duvall on my account - - - -		106 50

EXHIBIT B—

Dr.

1807.			
March 19	To amount of goods per bill, payable in 15 months		$7,055 63
	To postage of letters from him and Mr. Kerr		1 23
	To cash paid James Ray, carriage of 9 barrels of ginseng from Wheeling		32 56
23	To do. paid Batrell's bills at 3 days sight for the same sum advanced in Baltimore to Mr. Jewell		531 56
26	To do paid him	100 00	
	Deduct this sum borrowed some time past	10 00	90 00
26	To 20 Kentucky insurance, sp. sold this day, and ordered T. R. Barr to transfer to him at 85 per share		1,700 00
28	To my bills of this date at 60 days, in his favor, on James Weir	1,100 00	
	Martin Hawkins	500 00	1,600 00
31	To postage of letters to him this month		3 63
	To water loan certificate transferred to him	100 00	
	To Thomas Leiper's acceptance 27th inst. at 60 days	111 50	211 50
April 9	To amount of my account against Dennis Brashear & Co. sold 5th April, 1806	3,796 26	
	Do. do. 1st November	2,570 93	6,370 19
20	To Hugh Cochran's account hoisting ginseng into the loft, storing, &c., in February last	5 90	
	To porterage of goods 11th inst. to New Castle boat	1 92	7 82
21	To 6 months' interest on 3,799 26, amount goods sold D. Brashear & Co., and transferred to this account		113 97
	To 2½ months' on my two notes, endorsed and to be paid by him on my two notes, the one due 22d June, and the other 22d July next ensuing, for $3,775 30, the average time 2½ months		47 19
	To 1 month's interest on $2,836 40, credited 31st ultimo, but not due until 21st next month		14 18

81

Continued.

Cr.

1807.			
April	20	By his endorsements of my notes 19th ultimo, payable in 3 and 4 months, to William Morton - - - - -	$3,775 30
	21	By his 2 notes in favor of F. W., dated 28th February, payable in fifteen months; the one for $3,527 81, and the other for $3,527 82 - - - -	7,055 63
		By Francis West's note 13th March, 1807, payable in 60 days to Jacob Justice and Co., settled by Walter Brashear - -	897 30
		By this sum settled with John Allen on my account, by said Brashear - -	851 85

EXHIBIT B—

DR.

1807. April 21	To balance of interest due on his account current, per particulars furnished -	$346 95
	To balance due by Walter Brashear & Co. per account current this day transferred to his account - - - - - -	4,677 58
		$77,517 34
	To balance due this day per contra, payable with interest - - - -	2,140 76

PHILADELPHIA, *April* 21, 1807.

Errors and omissions excepted.
Copy. Signed, FRANCIS WEST.

BARDSTOWN, KENTUCKY, *July* 13, 1808.

I acknowledge the above account to be correct, that I am justly indebted to Francis West in the sum of two thousand one hundred and fifty dollars and seventy-six cents, as therein stated.
Copy. Signed, WALTER BRASHEAR.

In the circuit court of the United States for the district of Kentucky. The answer of John Lapseley and Samuel Mifflin, defendants named in the bill of complaint of Walter Brashear, to the further amended bill of said complainant. These defendants, now and at all times saving to themselves all and all manner of benefit and advantage of exception to the many errors and uncertainties and insufficiencies in the said complainant's further amended bill, for answer thereto, or to so much thereof as these defendants are advised is material for them to make answer unto, they answer and say, that they have no knowledge, information, or belief, that any partnership ever existed between the said John Nixon and Francis West at any time, as is alleged in said amended bill, or that the said Nixon ever had any interest whatever, either in the debt from Francis West to George Anderson, or in the debt with Walter Brashear to the said Francis West, until he became interested in the latter debt by an assignment or endorsement of the notes of Walter Brashear to him as security for a debt owing to the said Nixon by the said West; and as to the several other matters and things alleged in said further amended bill, the defendants say, they have no knowledge, belief, or information that they are true; without that there is any other matter or thing in the said further amended bill of complaint contained, material or necessary for the defendants to make answer unto, and not hereby or herein sufficiently answered unto, confessed, or avoided, or denied, is true. All which matters and things these defendants to aver, maintain, and prove, as this honor-

Continued.

Cr.

1807.			
April 21	By 4 months' interest on $1,100, charged 28th ultimo, but not received until 23d August - - - -	22 00	
	By 3 months' do. on $611 50, charged at same time, and not received then	9 71	
			31 17
	By balance due - - - -		2,140 76
			$77,517 34

able court shall award; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN LAPSELEY.
SAMUEL MIFFLIN.

John Lapseley, one of the defendants above named, being duly sworn, saith, that the several matters and things stated in the foregoing answer, he verily believes are true.

JOHN LAPSELEY.

Sworn to, the 27th day of August, A. D. 1824, before me,
RICHARD PETERS,
Judge Penn. dist. U. S.

Samuel Mifflin, one of the defendants above named, being duly sworn, saith, that the several matters and things stated in the foregoing answer are, as he verily believes, true.

SAMUEL MIFFLIN.

Sworn to, the 27th day of August, A. D. 1824, before me,
RICHARD PETERS,
Judge Penn. dist. U. S.

The following exhibits are filed in this cause, to wit:

Pleas at Philadelphia, before the honorable Jacob Rush, Esquire, President, and his associates, Judges of the court of common pleas of Philadelphia county, of the term of June, in the year of our Lord one thousand eight hundred and nine.

Among other things, it is thus continued:

Francis West, to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees, in trust for his creditors, vs. Walter Brashear.

Be it remembered, that heretofore, to wit, on the seventh day of April, in the year of our Lord one thousand eight hundred and nine, the said plaintiffs, by Charles Chauncey, Esq., their attorney, sued out of the said court the writ of the Commonwealth of Pennsylvania of foreign attachment, to

the sheriff of Philadelphia county directed, in the words, and of the tenor following, to wit:

PHILADELPHIA COUNTY, to wit.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you that you attach Walter Brashear, late of your county, yeoman, by all and singular his goods and chattels, rights and credits, in whose hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges, at Philadelphia, at our county court of common pleas, then to be held the first Monday of June next, to answer Francis West, to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees, in trust for his creditors, in a plea of trespass on the case, &c., and have you then there this writ. Witness Jacob Rush, Esq., at Philadelphia, the eleventh day of March, in the year of our Lord one thousand eight hundred and nine.

FRED. WALBERT, *Proth'y.*

At which said first Monday in June, in the year of our Lord one thousand eight hundred and nine, the return day of the aforesaid recited writ, came into court here the said plaintiffs, by their said attorney, and the sheriff of the county aforesaid, to wit, William T. Donaldson, Esq., to whom the said recited writ was in form aforesaid directed, and makes return to the court here of the said writ, thereon endorsed, to wit:

April 7th, 1809, at 15 minutes past 5 o'clock P. M., attached all the goods, wares, merchandise, moneys, credits, and effects of the defendant, in the hands and possession of James Latimer, jun., and summoned him, garnishee, to answer.

WM. PEDGEON, *Deputy Sheriff.*
Wm. T. Donaldson, Sheriff.

And the said defendant does not come; thereupon further day is given the said defendant, until the third Monday of September next; on which third Monday of September, it being the day of the month, in the year one thousand eight hundred and nine, the said plaintiffs, by their said attorney, came again into court, and the defendant, although solemnly called, came not, and further day is given him, until the first Monday of December next; on which first Monday of December, it being the day of the month, in the year last aforesaid, the said plaintiffs, by their said attorney, came again into court, and the said defendant, although solemnly called, came not; and now, in this present term of December, to wit, on the 20th day of January, in the year of our Lord one thousand eight hundred and ten, the said plaintiffs, by their said attorney, came again into court, and the said defendant, although solemnly called, came not. And the said plaintiffs showing to the court here that they have, in all things, complied with the directions of the act of Assembly of the Commonwealth of Pennsylvania, entitled "An act about attachments," it is therefore adjudged by the court here, that the said plaintiffs do recover against the said Walter Brashear, the defendant, their damages by reason of the premises.

PHILADELPHIA COUNTY, set.

I, John Porter, prothonotary of the court of common pleas of Philadelphia county, do certify that the foregoing is a copy of the record and all the proceedings had in the above case, from the record of the said court.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Philadelphia, the 23d day of October, Anno Domini 1817.

JOHN PORTER, *Proth'y.* [L. S.]

PENNSYLVANIA, PHILADELPHIA COUNTY, sct.

I, Jacob Rush, Esq , President of the first judiciary district of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, do certify that the foregoing record and attestations, made by John Porter, Esq., prothonotary of the said court, *is* in due form. Witness my hand and seal, the twenty-eighth day of October, Anno Domini one thousand eight hundred and seventeen.

JACOB RUSH. [SEAL.]

Pleas at Philadelphia, before the honorable Joseph Hemphill, Esq., President, and his assistant Judges of the district for the city and county of Philadelphia, of the term of September, in the year of our Lord one thousand eight hundred and eleven.

Among other things, it is thus continued:

Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, vs. James Latimer, garnishee of Walter Brashear.

Be it remembered, that on the thirteenth day of June, in the year of our Lord one thousand eight hundred and seven, the plaintiff, by William Lewis, Esq., his attorney, sued out a precept of the Commonwealth of Pennsylvania, commonly called a writ of scire facias against a garnishee, in the words following, to wit:

PHILADELPHIA COUNTY, sct.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

Whereas by our writ we lately commanded you that you should attach Walter Brashear, late of your bailiwick, yeoman, by all and singular his goods and chattels, rights and credits, whatsoever or wheresoever the same might be found in your bailiwick, so that you should be and appear before our Justices, at Philadelphia, at our court of common pleas, there to be held the first Monday of December then next, to answer Henry Nixon and Thomas Willing, executors of the will of John Nixon, deceased, who was endorsee of Francis West, of a plea of trespass on the case, &c., upon which writ you then returned that you had attached all the moneys, goods, and effects of the said Walter Brashear, in the hands and possession of James Latimer, and it was proceeded in such manner in our said court, that the said Henry and Thomas, executors as aforesaid, in our said court, were adjudged for their damages which they sustained, as well by occasion of the non-performance of a certain promise and assumption by the said Walter to the said John Nixon, in his lifetime, at Philadelphia, in your county made, as for their cost and charges by them about their suit in this behalf expended, whereof the said Walter Brashear was convict, as appears of record, &c.; and the said Henry and Thomas, executors as aforesaid, praying that a convenient remedy for the recovery thereof in the hands of James Latimer may be had, and we being willing those things which are rightly done in

our court be duly executed, do command you, that by honest and lawful men of your bailiwick, you make known to the said James Latimer that he be and appear before our Justices of Philadelphia, at our district court for the city and county of Philadelphia, there to be held the first Monday of September next, to show, if any thing he has or knows to say, why the aforesaid Henry and Thomas, executors as aforesaid, their execution for the damages aforesaid, of the proper goods and chattels of the said Walter Brashear, in the hands of him, the said Latimer, being, ought not to have; and have you there the names of those persons by whom you shall make it known to him, and this writ.

Witness Joseph Hemphill, Esq., at Philadelphia, the eighth day of June, in the year of our Lord one thousand eight hundred and eleven.

JOHN PORTER.

On which said first Monday of September, the sheriff of Philadelphia county, namely, Francis Johnson, made return that on the 2d day of July, in the year aforesaid, he had summoned the defendant.

HENRY NIXON and THOMAS M. WILLING, executors of the will of JOHN NIXON, who was endorsee of FRANCIS WEST, *vs.* JAMES LATIMER, garnishee of WALTER BRASHEAR. exit June 13.	*September term, A. D.* 1811, *sci. facias ag'st garnishee.* (*Dog.* 81.) "*Summoned.*"

September term, 1811, continued; December term, A. D. 1811, continued; March, June, September, and December terms, A. D. 1812, continued; March, June, September, and December terms, A. D. 1813, continued; March, June, September, and December terms, A. D. 1814, continued; March, June, September, and December terms, A. D. 1815, continued; March, June, September, and December terms, A. D. 1816, continued; March, June, September, and December terms, A. D. 1817, continued.

PHILADELPHIA CITY AND COUNTY, sct.

I, Timothy Mattack, prothonotary of the district court of the city and county of Philadelphia, do certify that the above contains a true transcript of the record of all the proceedings in the above cause, wherein Henry Nixon and Thomas M. Willing, executors of the will of John Nixon, who was endorsee of Francis West, are plaintiffs, against James Latimer, garnishee of Walter Brashear, defendant, and that the same exhibits the state of the action as it now remains on the docket of the said court.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Philadelphia, the sixth day of May, in the year of our Lord one thousand eight hundred and eighteen.

T. MATTOCK, *P. D. C.*

PENNSYLVANIA, PHILADELPHIA CITY AND COUNTY, sct.

I, Joseph Hemphill, President of the district court for the city and county of Philadelphia, do certify that the within record and attestation, made by Timothy Mattock, Esquire, prothonotary of said court, whose name is thereto subscribed, and seal of office affixed, is in due form, and made by the proper officer.

In testimony whereof, I have hereto set my hand, the sixth day of May, in the year of our Lord one thousand eight hundred and eighteen.

JOS. HEMPHILL.

PHILADELPHIA CITY AND COUNTY, sct.

I, Timothy Mattock, prothonotary of the district court for the city and county of Philadelphia, do certify that the honorable Joseph Hemphill, Esq., by whom the foregoing attestation is made, and who has thereto subscribed his name, was, at the time of so doing, and still is, presiding Judge of the said district court, duly commissioned and qualified, to all whose acts as such full faith and credit *is* and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the 7th day of May, A. D. 1818.

T. MATTOCK, *P. D. C.*

Pleas at Philadelphia, before the honorable Jacob Rush, President, and his associates, Judges of the court of common pleas for the city and county of Philadelphia, of the term of June, in the year of our Lord one thousand eight hundred and nine.

Among other things, it is thus continued:

FRANCIS WEST, to the use of SAMUEL MIFFLIN, JOHN LAPSELEY, and HENRY NIXON, his assignees, in trust for his creditors,
vs.
WALTER BRASHEAR.
} *Issue foreign attachment case, bail* $1,500.

Attach all goods, wares, merchandise, rights, moneys, credits, and effects of the defendant, in the hands of James Latimer, jun., and summon him as garnishee.

CHARLES CHAUNCEY,
Attorney for plaintiff.

April 7th, 1809.

To FREDERICK WALBERT, Esq.,
Prothonotary of the court of common pleas.

Whereupon a writ of the Commonwealth of Pennsylvania of foreign attachment, to the sheriff of the county of Philadelphia directed, issued forth in the manner and form following, that is to say:

PHILADELPHIA COUNTY, sct.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you that you attach Walter Brashear, late of your county, yeoman, by all and singular his goods and chattels, rights and credits, in whose hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges, at Philadelphia, at our county court of common pleas, there to be held the first Monday of June next, to answer Francis West, to the use of Samuel Mifflin, John Lapseley, and Henry Nixon, his assignees, in trust for his creditors, in a plea of trespass on the case, &c., and have you then there this writ. Witness Jacob Rush,

Esq., at Philadelphia, the eleventh day of March, in the year of our Lord one thousand eight hundred and nine.

FRED. WALBERT, *Proth'y.* [L. S.]

Endorsed as follows, to wit: June, 1809.

FRANCIS WEST, to the use of SAMUEL MIFFLIN, JOHN LAPSELEY, and HENRY NIXON, his assignees, in trust for his creditors,
vs.
WALTER BRASHEAR.

Foreign attachment case, bail $1,500.

Attach all the goods, wares, and merchandise, rights, moneys, credits, and effects of the defendant, in the hands of James Latimer, jun., summon him as garnishee.

CHAUNCEY, *for pl'ff.*

At which said first Monday of June, being the 5th day of the said month, in the year of our Lord one thousand eight hundred and nine, and the return day of the writ aforesaid, the sheriff of the county of Philadelphia, to whom the same was directed, to wit, William T. Donaldson, Esq., made return thereon by endorsement upon the same, in the following words and figures, to wit:

April 7th, 1809, at 15 minutes past 5 o'clock P. M., attached all goods, wares, merchandise, moneys, credits, and effects of the defendant, in the hands and possession of James Latimer, jun., and summoned him, garnishee, to answer.

WILLIAM PEDGEON, *Deputy Sheriff.*
William T. Donaldson, Sheriff.

Docket Entry.

FRANCIS WEST, to the use of SAMUEL MIFFLIN, JOHN LAPSELEY, and HENRY NIXON, his assignees, in trust for his creditors,
vs.
WALTER BRASHEAR, exit April 7.

Foreign attachment case, bail $1,500 *"Attached and summoned."*

September term, continued. January, 1810, judgment.

PHILADELPHIA COUNTY, sct.

I, Joseph B. Norbury, prothonotary of the court of common pleas for the city and county of Philadelphia, do certify that the foregoing contains a true copy of the precept, writ of foreign attachment, sheriff's return, and docket entries in the above case, and that no further proceedings appear to have been had therein than is contained in the foregoing exemplification.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Philadelphia, the 9th day of May, Anno Domini 1818.

JOS. B. NORBURY, *Proth'y.* [L. S.]

PENNSYLVANIA, PHILADELPHIA COUNTY, sct.

I, Jacob Rush, Esq., President of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, for the city and county of

Philadelphia, do certify that the foregoing attestation, made by Jos. B. Norbury, Esq., prothonotary of the said court of common pleas, is in due form, and made by the proper officer. In testimony whereof, I have hereto set my hand, at Philadelphia, the 11th day of May, A. D. 1818.

JACOB RUSH.

PENNSYLVANIA, PHILADELPHIA COUNTY, sct.

I Joseph B. Norbury, prothonotary of the court of common pleas for the city and county of Philadelphia, do certify that the honorable Jacob Rush, by whom the within attestation is made, and who has thereto subscribed his name, was, at the time of doing so, and still is, President of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas, court of general quarter sessions of the peace, and orphans' court, for the city and county of Philadelphia, duly commissioned and qualified, to all whose acts as such full faith and credit *is* and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Philadelphia, the 11th day of March, Anno Domini 1818.

JOS. B. NORBURY, *Proth'y.*

This indenture, made the twenty-first day of April, in the year of our Lord one thousand eight hundred and seven, between Francis West, of the city of Philadelphia, merchant, of the one part, and Samuel Mifflin, John Lapseley, and Henry Nixon, all of the city of Philadelphia, merchants, of the other part. Whereas the said Francis West hath of late met with and suffered divers misfortunes in trade, and being at this time unable to pay and discharge his just debts, is desirous of conveying and assigning all his property for the benefit of his creditors, now this indenture witnesseth, that for and in consideration of the premises, and of the sum of five shillings by the said Mifflin, Lapseley, and Nixon, in hand paid to the said West, the receipt whereof is hereby acknowledged, he, the said Francis West, hath granted, bargained, sold, assigned, transferred, and set over, and doth hereby grant, bargain, sell, assign, and set over, to the said Samuel Mifflin, John Lapseley, and Henry Nixon, their heirs and assigns, all his lands, tenements, and hereditaments, goods, debts, chattels, and effects, and all his estate, real, personal, and mixed, wheresoever situate, and whatsoever nature or kind the same may be, to have and to hold the same to the said Samuel Mifflin, John Lapseley, and Henry Nixon, their heirs and assigns, to the proper use and behoof of the said Samuel Mifflin, John Lapseley, and Henry Nixon, their heirs and assigns, for ever; on trust, nevertheless, that the said Samuel Mifflin, John Lapseley, and Henry Nixon, or any two of them, shall, as soon as conveniently may be, sell and dispose of all the estate and property hereby conveyed as aforesaid, at public or private sale, as to them or any two of them may seem meet, for such prices as can be obtained for the same, and shall, as soon as may be, collect, sue for, and recover all rights, credits, and debts due to the said Francis West, and out of the proceeds thereof shall pay and discharge, first, all sums of money borrowed from William McTim Biddle and George Eddy, trading under the firm of William M. Biddle and Company; secondly, all debts due from the said Francis West for cash advanced to and actually borrowed by him, and for all moneys paid, or which may hereafter be paid, by the said Samuel Mifflin, as special bail of a certain John Jordon, jun., in sundry causes in the supreme court of

Pennsylvania, wherein the said Jordon is defendant, the said Mifflin having become bail as aforesaid under a promise of indemnity from the said Francis West, the said debts to be paid in equal proportions; third, all debts due from the said Francis West on accommodation notes and bills of exchange loaned to him and discounted for his use, and endorsements made for his accommodation, whereon money has been raised for his use, the said debts to be paid in equal proportions; fourth, all other just debts due from the said Francis West to any person or persons whatsoever, the said debts to be paid in equal proportions: provided, nevertheless, that none of the above described creditors shall be entitled to receive any part or *individent* of the property hereby conveyed, or of its proceeds, who shall, within ninety days from the date hereof, sign and execute a full and complete release of all claims and demands upon the said Francis West, of every nature or sort whatsoever. And the said Samuel Mifflin, John Lapseley, and Henry Nixon, are hereby constituted and appointed the true and lawful attorneys of the said Francis West, for him and in his name to sell and convey the property hereby conveyed, and to receive the purchase money therefor, and to collect, sue for, and receive all debts to him due, and execute every matter and thing necessary for the complete and due execution of the trust hereby created. In witness whereof, the said parties have hereto set their hands and seals, the day and year first above written.

FRANCIS WEST. [SEAL.]
SAMUEL MIFFLIN. [SEAL.]
JOHN LAPSELEY. [SEAL.]
HENRY NIXON. [SEAL.]

Sealed and delivered in the presence of us,
WM. M. MAGOFFIN,
JOSEPH T. BARTON.

On the 22d day of April, in the year 1807, personally appeared before me, Robert Wharton, Esq., mayor of the city of Philadelphia, the within named Francis West, being by me examined, acknowledged the within instrument of writing to be his act and deed, and desired the same might be recorded as such. Witness my hand and seal.

ROBERT WHARTON, [SEAL.]
Mayor of the city of Philadelphia.

Recorded this 27th day of April, 1807.

I, James Carson, Esq., recorder of deeds, &c., for the city and county of Philadelphia, do certify the preceding writing to be a true copy of a certain instrument of writing remaining on record in my office, in deed book E F, No. 26, page 409, &c.

In witness whereof, I have hereunto set my hand, and seal of office, the 27th day of March, 1813.

JAMES CARSON, *Recorder.* [L. S.]

(Exhibit No. 1.)

BARDSTOWN, *July* 25, 1807.

DEAR SIR: By last mail I received your esteemed favor of the 30th June, for which you have my warmest thanks. I had with me a memorandum of the time the $2,000 became due, and made my arrangements accordingly,

and I have no doubt you have, before this, received the amount through the hands of Nixon, Walker, & Co., to whom I requested Messrs. Thomas and Robert Barr to remit money. It is truly alarming and distressing, to the mercantile part of our country particularly, that there exists so great a probability of war between Great Britain and ourselves; for myself I am appalled, and know not what steps to take. I have made some contracts for produce, and intended to go largely into that business; but on hearing of this business, I desisted a while, for further accounts at least, before I touched it again. Our country, it may be said, is running over with its produce, so fine a season have we had; but should we become embroiled with England it will avail us little, as we have but one outlet, which is so easily shut up. Nothing has so much excited and exasperated the mind of the western people, since they have called themselves independent, as this provoking outrage on our country and countrymen; should it be necessary, I am persuaded you will find that the Kentuckians will muster among you in their full proportion. Please to tell Mr. H. Nixon I will answer his letter of the 24th by the next mail; his of that date came to hand with yours of the the 30th of same month. I shall take care that he will not be disappointed for his friendship to me.

I am, with much respect, your most obedient, humble servant,

WALTER BRASHEAR.

To JOHN NIXON, *Philadelphia.*

BARDSTOWN, *June* 10, 1808.

RESPECTED SIR: I have now before me your letter of the 25th of May, which was a long time on the way, but which might have been answered two mails since, had I not been absent in a neighboring county on both mail days. This circumstance, added to the extreme reluctance I felt in answering it, has detained this so long; do not understand that I have any reluctance to communicate with you freely, but I knew I could not answer your letter in that way that was most agreeable to you, the enclosure of a bill for a part or the whole of the money due you. You speak of your expectation as to the receipt of money from me, at the same time laying stress on the of credit given by F. W. on the goods; I admit, sir, that the credit was long, nor was the price of the goods a short one. As to any accommodation rendered me on the score of that contract, I trust it will be placed behind the curtain, and that the question was not asked why the thing was done, for should it, and the answer given honestly, it be found that was to render you, with other securities, perfectly satisfied as to the debt due by F. W. You reason rationally and charitably that I have had my portion of disappointments, but still you think something should have been done for you, in as much as I made positive assurances that money should be paid you. This promise I intended to comply with, and the same obligation I consider myself under to every creditor I have; and trust, sir, I shall not be considered as lacking honor because I have not been able to comply with my mercantile engagements. Had you, sir, previous to the embargo, promised your friend in that in all the month of August, 1808, you furnish him a ship load of flour or staves, would you think that friend could justly accuse you of a want of sincerity, and unworthy of friendship? I leave for you to draw the parallel between the two cases I should feel hurt, sir, to the extreme, if a cause like this should change any favorable opinion you have been charitable enough to form of me. I should feel extremely mortified if a man on

earth could point his finger to an act of my life, and say I had designedly deceived. I confess that I feel chagrined that I am not able to comply with my mercantile engagements; but I have the consolation to reflect that I do not, nor never did, intend to wrong any man. I do not see, at this time, how I can pay my creditors if there is not an outlet for my produce. I have a considerable quantity of ginseng and other property, which I cannot, at any price, convert into money. I expect Mr. West will be down here in the course of two weeks; whatever can shall be done with him in your business. And believe me, respectfully, your friend and humble servant,

WALTER BRASHEAR.

To JOHN NIXON, Esq.

PHILADELPHIA, *4th November*, 1809.

DR. WALTER BRASHEAR, *Bardstown, Kentucky:*

SIR: From the correspondence of our testator, the late J. Nixon, Esq., we find that you were urged to make payment of your notes for $7,055 63 in favor of Mr. West, and endorsed by him to Mr. Nixon for a valuable consideration. During Mr. Nixon's lifetime no remittances appear to have been made on account of these notes; of course the whole debt, with the accruing interest to the present time, is due to the estate we represent. Mr. West, since the death of Mr. Nixon, has stated that a remittance of ginseng had been made to Mr. J. Latimer, to this place, to provide in part for the payment of your notes, and also a balance of about $2,000 due his estate; the assignees, Messrs. Mifflin and Lapseley, on being informed of this remittance, laid an attachment in the hand of Latimer to secure their balance, which of course establishes their priority of payment, as their proceedings have taken place several months since. Finding a sum would remain with Mr. Latimer, after payment of their demand, nearly sufficient to discharge one of your notes, we attached the same for the benefit of Mr. Nixon's estate. As no provision has been made for the payment of one of your notes, you will oblige us by pointing out how and when we may expect its discharge; and to request that all remittances on account of your notes assigned to Mr. Nixon may be made to us his representatives. We think a direction from you to Mr. J. Latimer to pay over the balance due on our ginseng on the attachment, would save you much interest, as many months must elapse before the law will possess either the assignees or us of our legal claims. Respectfully, yours,

HENRY NIXON,
THO. M. WILLING,
Executors of Nixon.

PHILADELPHIA, *2d February*, 1810.

SIR: We beg leave to call your attention to the foregoing letter, and to state that your funds in Mr. Latimer's hands must lay without interest under the attachments until they are divided, unless you order him to pay over the same in the proportions that are due, first to Mr. West's assignees, for the balance of your account as settled with Mr. West when in Kentucky, of about $2,000, and what remains on the two notes in our possession, as stated in our letter of the 4th November last, together $7,055 63.

We remain your obedient servants,

HENRY NIXON,
THOMAS M. WILLING,
Executors of J. Nixon.

PHILADELPHIA, *January* 4, 1812.

Dr. WALTER BRASHEAR:

SIR: It was our hope that before our departure for Kentucky an arrangement would have been made by you with Mr. Latimer, which would have enabled us to have received from him your effects in his hands, the amount of your notes in our possession. In this expectation we were disappointed, being left to pursue our legal remedy; under the attachment judgment has been had, and the usual proceedings to compel Mr. Latimer to account for the amount in his hands belonging to you. Mr. Latimer has lately failed, and assigned all his property to pay his preferred creditors, in the first instance to the extent of $80,000, and afterwards his general creditors, of which latter class you are one. It is believed his property will not do more than pay his preferred debts, of course we cannot calculate on receiving any part of your debt from him, but must look to you for its discharge; you will therefore oblige us by pointing out your means of payment, and stating when we may expect it, as we are desirous of communicating to those interested some satisfactory information relative to the claim. We offered Mr. Latimer security if he would pay us the amount due you, which was declined, on the ground of his being advised so to do. We believe it was not in his power to pay at the time, *his credit* recollect our anxiety to receive payment, which arose from a belief that your funds in his hands were insecure. We remain, &c.,

HENRY NIXON,
THO. M. WILLING,
Executors of J. Nixon.

I certify that I have compared the above letters with the letter book of the executors of the late John Nixon, and that they are true copies extracted from the same.

R. ROWLAND.

PHILADELPHIA, *March* 16, 1814.

PHILADELPHIA, *February* 28, 1810.

Mr. F. WEST:

SIR: Your objections to the account furnished on behalf of the estate of J. Nixon have received our immediate attention, and we are pleased to find them so specific as to have no difficulty in our reply. The charge of profit on goods under the 28th of February, 1806, in the sum of $1,245 48, is taken from an account rendered by yourself, the entry is in the handwriting of Mr. Nixon; its character of course cannot be changed, without full proof of its being relinquished, of which there is no trace with us. The charge of rent was made with your approbation at the time, and appeared so moderate as to receive your consent as just, one which must be allowed. Copy of the account furnished Mr. Nixon to your assignees, with an endorsement on by him to that effect; we hold this account you approved by letter before your departure for the western country, stating that you had made all the entries to correspond, excepting that of the rent. Nothing appears to be charged but what was paid after your failure in 1801 for your personal use; the balance due Mr. Nixon on that account has been varied by sundry debts and credits, which are explained by the continued account now enclosed you. Hart and Bartlett's debt having been recovered, the

same is fully credited; they having been charged with the interest on their notes, to Mr. Nixon, credited with all the moneys received on their account. We shall use our best endeavors to from Dr. Brashear's effects in Mr. Latimer's sufficient to liquidate the balance of your account with the estate, and hand over to your assignees any sum received beyond the claim we represent; in the mean time if your assignees were to withdraw all opposition to our receiving from Mr. Latimer the sum which we must ultimately recover under the attachment, the interest would be saved both to the Doctor and your estate.

We remain your obedient servants,

HENRY NIXON,
THO. M. WILLING,
Executors of J. Nixon.

Postscript to Mr. F. West's letter.

A small balance is due from Mr. Nixon's estate to Hart and Bartlett, of $103 63, which ought to be paid them, unless you have further claims on those gentlemen; and as Mr. Nixon has received a dividend on the borrowed money of $520 50 on the sum of $1,041, the executors must look to the assignees for the balance of the demand, applying to the credit of the account whatever may be received on the notes Dr. Brashear lodged and assigned by you to Mr. Nixon as a security for the amount due him.

PHILADELPHIA, *7th March*, 1810.

Messrs. LAPSELEY and MIFFLIN,
Assignees of F. West:

GENTLEMEN: Enclosed is our reply under date of 28th ultimo to Mr. West's objections on the account of the late Mr. Nixon, as rendered his assignees. You will oblige us by considering our remarks, and withdrawing all opposition to our attachment on Dr. Brashear's property in the hands of Mr. Latimer. You certainly can demand of us settlement, and we must pay over to you any thing recovered beyond what will satisfy the just demand of Mr. Nixon's estate.

We remain yours, &c.

PHILADELPHIA, *June* 24, 1811.

JAMES LATIMER, Esq.

DEAR SIR: Mr. Lewis informs us that you can now, with safety to yourself, pay into court the balance due to Mr. Brashear, and that the executors of Mr. Nixon, by giving bond in the proper form, can receive the amount under their judgment; this facility, however, rests with you to give or not, as you feel authorized. We are respectfully, yours,

HENRY NIXON,
THO. M. WILLING,
Executors of J. Nixon, Esq.

I certify that I have compared the above letters with the letter book of the executors of the late John Nixon, and that they are true copies extracted from the same.

R. ROWLAND.

PHILADELPHIA, *March* 16, 1814.

SIR: Your note of 28th ultimo was delivered to me this morning by Mr. Lapseley. The course you have again adopted confirms me in the opinion that it is the desire of the executors of Mr. Nixon to have my account settled between themselves and my assignees, to which I shall make no objection; permit me, however, to remark, much disappointment and explanation could not have taken place between ourselves, as suggested to Mr. Nixon, before the present course was pursued.

I remain respectfully, yours,

FRAN. WEST.

DEAR SIR: I have suggested to Mr. West the propriety of a settlement of his account with the estate of your deceased father, by reference to men, as you propose; and, in reply, received from him the enclosed note, in which you will he objects thereto, for reasons which he has not disclosed. I feel disposed to to your proposition to recover the money from the hands of Mr. Latimer, that it may be placed in a productive relation; this I understand may be done without prejudice to either party.

Very respectfully, your obedient servant,

JOHN LAPSELEY.

March 29, 1811.

HENRY NIXON, Esq.

DEAR SIR: I refer you to the annexed copy of my note, dated 10th November last: the same motive existing, does not permit my concurring at present to the proposal of Mr. Nixon.

Very respectfully, yours,

FRS. WEST.

March 29, 1811.

To Mr. JOHN LAPSELEY:

I regret, extremely, it is not in my power, at this time, to consent to the reference proposed by Mr. Willing; as soon as it be otherwise, you shall be informed. I require testimony, at present not within my reach, to establish some points that I conceive material to a full understanding of existing differences, and which I hope you will excuse not being communicated to you at this time.

On searching the records of conveyances for the city and county of Philadelphia, I find an assignment on the record given by James Latimer, of the city of Philadelphia, merchant, to George Latimer, Esq., and John Hollingsworth, the younger, merchant, both of said city, conveying all his lands, tenements, and hereditaments, bonds, bills, notes, and debts, of every kind, due, or to become due, and all goods, wares, and merchandise, the proceeds thereof, and all adventures at sea, or at any place in the United States, or elsewhere, belonging to him, or to which he is in any way interested or concerned with others, and all ships and vessels, at sea or in port, owned by him, in whole or in part, in trust, nevertheless, for the benefit of his creditors, as therein particularly mentioned and specified, and appointing said assignees his attorneys, either jointly or severally, to do all acts that may be necessary to carry the said assignment into complete effect, and to substitute an attorney or attorneys under them, and to dissolve the same; which assignment is dated the twenty-ninth day of August, eighteen hun-

dred and eleven, and recorded the thirty-first August eighteen hundred and eleven, in Letter of Attorney Book I C, page 126, &c. Witness my hand, and seal of office, this seventeenth day of April, eighteen hundred and eighteen.

MATTHEW RANDALL, *Recorder.* [L. S.]

Sale of ginseng on account of Mr. Walter Brashear.

1809.		
May 31,	James Latimer, 6 months' credit, a quantity of ginseng in barrels:	
	717 lbs. clarified, at 50 cts. - - -	$353 50
	5,747 do. at 50 cts. - - -	2,893 50
	4,881 crude / 6,816 do. } 11,697 - - - -	4,678 80
	19 barrels received in May, 1807, nett 1,497, at 30 cts. - - - - -	449 10
	And 7,809 lbs. clarified, at 45 cts. - -	3,514 05
		11,879 95
	Charges:	
	Porterage, storage, and turning out to weigh, $7 50	
	Weighing 225 cwt. at 26 cts. - - 4 50	
		12 00
	Proceeds - -	$11,861 95

PHILADELPHIA COUNTY, sct.

[L. S.] Among the rolls, records, and remembrances of the court of common pleas for the city and county of Philadelphia, in the term of March, Anno Domini 1809, before the honorable Jacob Rush, President, and his associates, Judges of the said court, appears the following writ of foreign attachment, issued by order of Benjamin Tilghman, Esq., attorney for plaintiff, to wit:

PHILADELPHIA COUNTY, sct.—The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you that you attach Walter Brashear, late of our county, yeoman, by all and singular his goods, chattels, rights, and credits, in whose hands or possession soever the same may be found in your bailiwick, so that he be and appear before our Judges, at Philadelphia county court of common pleas, there to be held the first Monday of March next, to answer James Latimer in a plea of trespass on the case, &c., and have then there this writ. Witness Jacob Rush, Esq., at Philadelphia, the tenth day of December, in the year of our Lord one thousand eight hundred and eight.

FRED. WALBERT.

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Endorsed:

JAMES LATIMER, *vs.* WALTER BRASHEAR. } *29th March*, 1809. Foreign attachment bail in $8,000. B. TILGHMAN, *P. Quer.*

Attach in the hands of James Latimer, and summon him as garnishee.

And now, the first Monday of March, in the year aforesaid, being the day on which said writ was made returnable, William T. Donaldson, Esq., high sheriff of the city and county of Philadelphia, comes into court, and makes the following return, endorsed on the aforesaid writ, to him directed, to wit:

February 17th, 1809, at 55 minutes past 4 o'clock P. M., all and singular the goods and chattels, rights and credits of the defendant, in the possession of James Latimer, and summoned him as garnishee.

G. C. SNYDER.
WILL. T. DONALDSON, *Sheriff.*

And now, the 9th day of October, Anno Domini 1809, by order of Benjamin Tilghman, Esq., attorney for plaintiffs, judgment entered for plaintiffs, agreeably to the directions of the act of Assembly in such case made and provided. By the court.

PHILADELPHIA COUNTY, ss.

I, Matthew Randall, prothonotary of the court of common pleas aforesaid, do certify that the following contains a true copy of the proceedings had in the case wherein James Latimer plaintiff, and Walter Brashear defendant, as the same remains of record in my office. In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Philadelphia, the 23d day of April, A. D. 1823.

MATTHEW RANDALL.

PHILADELPHIA COUNTY, sct.

I, John Hollowell, President of the first judicial district of Pennsylvania, and presiding Judge of the court of common pleas, orphans' court, and court of general quarter sessions of the peace, in and for the city and county of Philadelphia, do certify that the foregoing record and attestation, made by Matthew Randall, Esq., prothonotary of the said court of common pleas, is in due form, and made by the proper officer. Witness my hand and seal, this 23d day of April, A. D. 1823.

JOHN HOLLOWELL. [SEAL.]

STATE OF KENTUCKY, FAYETTE COUNTY, sct.—Pleas before the honorable the Judges of the Fayette circuit court, at the court-house, in Lexington, at the September 1810, and on the day of said term.

GEORGE ANDERSON, *against* WALTER BRASHEAR. } *On a scire facias as special bail for Francis West.*

Be it remembered, that heretofore, to wit, on the 13th day of May, 1809, the following scire facias issued herein, to wit:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

Whereas at a court held for the circuit of Fayette, at the court-house, in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of five thousand one hundred and ninety-eight dollars, to be discharged by the payment of four thousand dollars, as well for his debt and damages, as also the sum of eleven dollars and sixty-eight cents, which, to the said Anderson, in our said court, was adjudged for his costs by him herein expended; and whereas at a court held for the said circuit, in the month of September, and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant that in case he should be cast in this suit he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, that he, the said Brashear, would do it for him; nevertheless, the said West hath not paid to the said Anderson the said sum of four thousand dollars, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed; and whatever in our said court is rightly done should be duly executed, we therefore command you that you make known to the said Walter Brashear that he be before the Judges of our said court, at the court-house, in Lexington, on the third day of our next June court, to show cause, if any he can, why the said George Anderson execution for damages aforesaid should not have, if to him it seems expedient, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 30th day of May, 1809, and in the seventh year of the Commonwealth.

THOS. BODLEY.

On which the sheriff made the following return: "Not found."

JOHN H. MORTON, *Sheriff.*

And afterwards, at rules held for the circuit aforesaid, at the clerk's office of the Fayette circuit court, for the month of June, and year 1809, it is ruled that an alias scire facias issue in this case, and this cause be continued until the next rule day.

At which time, to wit, at rules held for the month of July, and year 1809, at the clerk's office of the court aforesaid, this cause is continued until the next rule day.

At which time, to wit, at rules held for the month of August, and year last aforesaid, at the clerk's office aforesaid, this cause is continued until the next court.

The following alias issued to September term, to wit:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

Whereas at a court held for the circuit of Fayette, at the court-house, in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of $5,198, to be discharged by the payment of $4,000, as well for his debt and damages, as also the sum of $11 68 cents, which to the said Anderson in our said court was adjudged for his costs by him herein expended; and whereas at a court held for the circuit aforesaid, in the month of September, and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant that in case he should be cast in the suit he shall satisfy and pay the costs

and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, that he, the said Brashear, would do it for him; nevertheless, the said West hath not paid to the said Anderson the said sum of four thousand dollars, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed; and whatever in our said court is rightly done should be duly executed, we therefore again command you that you make known to the said Brashear that he be before the Judges of our Fayette circuit court, at the court-house, in Lexington, on the third day of our next September term, to show cause, if any he can, why the said Anderson execution for the damages aforesaid against him should not have, and prosecute, if to him it should seem expedient; and, further, to do and abide what our said court shall in that behalf consider, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 4th day of August, 1809, and in the 18th year of the Commonwealth.

THOS. BODLEY.

On which the sheriff made the following return: "Not found within my bailiwick."

WILL. R. MORTON, *D. S.*
For Samuel Blair, Sheriff F. C.

And afterwards, at rules held at the clerk's office aforesaid, for the months of September, October, November, and December, 1809, this cause is (successively) continued until the next rule day.

And afterwards, at rules held at the clerk's office aforesaid, for the month of January, and year 1810, the defendant being solemnly called, and not appearing, on the motion of the plaintiff, by his attorney, it is ordered that judgment be entered for the plaintiff against the defendant, for the debt, damages, and costs in the writ of scire facias mentioned, unless the said defendant shall appear at the next court, and plead to issue.

And afterwards, at rules held at the clerk's office aforesaid, for the month of February, and year last aforesaid, this cause is continued until the next court.

And afterwards, at a court begun and held for the circuit aforesaid, at the court-house aforesaid, for the month of March, and year last aforesaid, and on the sixteenth day of said court, on motion of the defendant, it is ordered that the office judgment herein be set aside; and it is ordered that the sheriff's return herein be quashed, and that this suit be remanded to the rule docket.

And afterwards, at rules held in the clerk's office aforesaid, for the month of March, and year 1810, this cause is ordered to be continued until the next rule day.

And afterwards, at rules held in the clerk's office aforesaid, for the month of April, and year last aforesaid, it is ruled that an alias scire facias issue herein, returnable to the next court; and this cause is continued until the next rule day.

And afterwards, under an act of Assembly, entitled An act regulating proceedings in civil causes, &c., this cause is placed on the issue docket to June term, 1810.

The following scire facias issued to June term, to wit:

The Commonwealth of Kentucky to the sheriff of Nelson county, greeting:

Whereas at a court held for the circuit of Fayette, at the court-house, in Lexington, on the 31st day of March, 1809, a certain George Anderson recovered against Francis West the sum of $5,198, to be discharged by the payment of $4,000, as well for his debt and damages, as also the sum of $11 68 cents, which to the said Anderson in our said court was adjudged for his costs by him expended; and whereas at a court held for the circuit aforesaid, in the month of September, and year 1808, a certain Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that in case he shall be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, that he, the said Brashear, would do it for him; nevertheless, the said West has not paid to the said Anderson the said sum of $4,000, nor any part thereof, nor rendered his body to prison in execution for the same, neither hath the said Brashear done it for him, as by the said Anderson we are informed; and desirous that whatever in our said court should be duly executed, we therefore again command you that you make known to the said Walter Brashear that he be before the Judges of our Fayette circuit court, at the court-house, in Lexington, on the third day of our next June term, to show cause, if any he can, why the said Anderson judgment and execution against him for the damages aforesaid should not have, and prosecute, if to him it shall seem expedient; and, further, to do and abide what our said court shall in that behalf consider, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house, this 4th day of April, 1810, and in the 18th year of the Commonwealth.

THOS. BODLEY, *C. F. C. C.*

On which the sheriff made the following return: Executed.

JOHN D. STROTHER, *D. S.*
For Henry Miles, S. N. C.

And afterwards, at a court begun and held for the circuit aforesaid, at the court-house aforesaid, for the month of June, and year 1810, ordered that this suit be continued until the next term.

And afterwards, at a court begun and held for the circuit aforesaid, at the court-house aforesaid, for the month of September, and year last aforesaid, and on the seventeenth day of said court, this day came the plaintiff, by his attorney, and the defendant, though solemnly called, came not, but made default. Therefore, it is considered by the court that the plaintiff have execution against the said defendant, as special bail for Francis West, for the sum of $5,198, to be discharged by the payment of $4,000, and also $11 68 cents, the damages and costs in the scire facias mentioned, and also his costs herein expended; and the said defendant in mercy, &c.

And afterwards, on the 2d day of October, 1810, the following execution issued:

The Commonwealth of Kentucky to the sheriff of Nelson county, greeting:

You are hereby commanded that of the estate of Walter Brashear, late of your bailiwick, you cause to be made $5,198, also $11 68 cents, the

damages and costs in the scire facias mentioned, which George Anderson, late in our Fayette circuit court recovered against him, as special bail for Francis West, for damages and costs, also $6 10½ cents, which to the said Anderson in our said court was adjudged for his costs by him about his suit in this behalf expended, whereof the said Brashear is convict, as appears to us of record, and that you have the same before the Judges of our said court, at the court-house, in Lexington, on the 26th day of November next, to satisfy and pay the said Anderson his debt and costs aforesaid, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 2d day of October, 1810, and in the 19th year of the Commonwealth.

THOS. BODLEY, *C. F. C. C.*

On which the sheriff made the following return: "This execution was levied on the defendant Brashear's estate, and proceedings staid on account of the plaintiff's orders to the sheriff of Nelson county not to execute, which I herewith return to the office."

JOHN D. STROTHER, *D. S.*
For Henry Miller, S. N. C.

The following is the plaintiff's order aforesaid:

The sheriff of Nelson county will return the execution issued in my name against Walter Brashear for $4,000 and costs, &c., from the clerk's office of the Fayette circuit court, not executed by my order.

GEORGE ANDERSON.

STATE OF KENTUCKY, FAYETTE CIRCUIT, sct.

I, William L. Pogue, deputy for Thomas Bodley, clerk of the court for the circuit aforesaid, do certify that the foregoing seven pages contain a full, true, and complete transcript of the record and proceedings in the case of Anderson against Brashear aforesaid. In testimony whereof, I have hereto set my hand, and caused the seal of this office to be affixed, this 26th day of May, 1818.

WM. L. POGUE, *D. C.* [L. S.]

STATE OF KENTUCKY, FAYETTE CIRCUIT, sct.—Pleas held before the honorable the Judges of our Fayette circuit court, at the court-house, in Lexington, on the day of

GEORGE ANDERSON, plaintiff,
against } *In case.*
FRANCIS WEST, defendant.

Be it remembered, that heretofore, to wit, on the first day of October, one thousand eight hundred and eight, the following capias ad respondendum issued herein, in the words and figures following:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

You are hereby commanded to take Francis West, if he be found in your bailiwick, and him safely keep, so that you have his body before the Judges of our Fayette circuit court, at the court-house, in Lexington, on the 24th day of our present September court, to answer George Anderson of a plea of trespass on the case, damages $4,000, and have then there this writ.

Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 1st day of October, 1808, and in the 17th year of the Commonwealth.

THOS. BODLEY.

Endorsed—Memorandum: Case. No bail unless ordered by a Judge.
CLAY, *p. q.*

FAYETTE, sct.

Before me, a justice of the peace for the said county, personally appeared George Anderson, and made oath that the within named defendant is justly indebted to him in the sum of twenty-five hundred dollars, or upwards; that the said defendant is about to depart this Commonwealth, and that he verily believes, unless he be held to bail, that this affiant will lose his debt. Certified the 1st October, 1808.

JNO. C. RICHARDSON.

The sheriff is directed to take bail in the sum of twenty-five hundred dollars October 1, 1808.

JNO. MONROE,
One of the circuit Judges for the State of Kentucky.

Upon which the sheriff made the following return, to wit: Executed, Thomas T. Barr appearance.

JNO. H. MORTON, *Sheriff.*

The following is the bond returned with foregoing, to wit:

Know all men by these presents, that we, Francis West and Thomas T. Barr, of the county of Fayette, and Commonwealth of Kentucky, are held and firmly bound to John H. Morton, sheriff of the county of Fayette, in the sum of four thousand dollars, lawful money of Kentucky, to be paid to the said John H. Morton, or his certain attorney, his executors, administrators, or assigns, for the true payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 30th day of September, in the year 1808. The condition of the above obligation is such, that whereas George Anderson, plaintiff, hath sued out of the Fayette circuit court a writ of capias ad respondendum against the body of the above bound Francis West, defendant, in an action of trespass on the case, and bail ordered by a Judge for the sum of $2,500, by virtue of which writ John H. Morton, sheriff, hath arrested the body of the said Francis West, defendant; now, if the said Francis West do appear before the Judge on the 24th day of our September term, then and there to answer to the said action, then the above obligation to be void, else to remain in full force.

FRANCIS WEST. [SEAL.]
THO. T. BARR. [SEAL.]

Teste: JOHN H. MORTON, *Sheriff.*

And afterwards, to wit, at a court begun and held for the circuit aforesaid, and on the 22d day of our September term, 1808, Walter Brashear, of Nelson county, came into court, and undertook for the defendant, that in case he shall be cast in this suit, he shall satisfy and pay the costs and condemnation of the court, or render his body to prison in execution for the same, or, on failure thereof, the said Brashear will do it for him.

At rules held for the circuit aforesaid, for the month of October, and year 1808, the plaintiff this day filed his declaration herein, which is in the words following, to wit:

FAYETTE CIRCUIT, set.

George Anderson complains of Francis West, in custody, &c., for that whereas the said defendant, on the day of in the year of our Lord 180 , at to wit, in the circuit aforesaid, was indebted to the said plaintiff in the sum of four thousand five hundred dollars, for so much money had and received by the said defendant to and for the use of the plaintiff; and being so indebted, afterwards, to wit, on the same day and year aforesaid, at the circuit aforesaid, the said defendant assumed upon himself, and to the said plaintiff faithfully promised, well and truly to pay the said sum of money whenever after he should be thereunto required; and whereas, also, afterwards, to wit, on the same day and year last aforesaid, at the circuit aforesaid, the said defendant was indebted, to the said plaintiff in other sum of four thousand five hundred dollars, for so much money before that time paid, laid out, and expended, to and for the use of the said defendant, at his special instance and request; and being so indebted, the said defendant, afterwards, to wit, on the same day and year last aforesaid, assumed upon himself, and to the said plaintiff faithfully promised, to pay him the last mentioned sum of four thousand five hundred dollars whenever after he should be thereunto requested; nevertheless, the said defendant, in nowise regarding his said several promises and assumpsits, but contriving and fraudulently intending the said plaintiff to deceive and defraud the said several sums of money, or either of them, hath not paid, although afterwards, to wit, on the same day and year last aforesaid, and often after, at the circuit aforesaid, he was thereto requested, but the same to him to pay the said defendant hitherto hath altogether refused, and still doth refuse, to the damage of the plaintiff four thousand dollars, and therefore he sues, &c.

CLAY, *p. q.*

Pledges: J. DOE, R. ROE.

The following account filed herein, to wit:

Dr. Francis West to George Anderson.

21st Aug. 1806.	To cash remitted to you from New Orleans,	$1,500 00
	To interest thereon,	
Feb. 4th, 1807.	To cash remitted to you by T. Hart & Bartlett,	1,000 00
	To interest thereon,	
1804, Oct. 16th.	To cash per your receipt, - - -	495 31
1805, April 9th.	To John Jordan's bill of exchange on you, -	600 00
Aug. 12th, 1805.	To cash to you by letter of this day, - -	500 00
Nov. 9th, 1805.	To cash your letter of this day, - -	300 00
	To interest on the several sums,	

And afterwards, to wit, at rules held for the circuit aforesaid, and month of November, and year 1808, a rule is given the defendant to plead herein. And at rules held for the circuit aforesaid, and month of December, and year last aforesaid, the defendant having failed to plead herein, agreeably to

a rule heretofore made, it is ordered that the plaintiff have judgment by default, and a writ of inquiry is awarded the plaintiff, returnable to our next March court.

And afterwards, to wit, at a court begun and held for the circuit aforesaid, and month of March, and year 1809, this day came the parties aforesaid, by their attorneys, and thereupon, on motion of the defendant, it is ordered that the conditional judgment and writ of inquiry taken herein at the rules in the clerk's office be set aside; and thereupon the defendant comes and defends the wrong and injury, when, &c., and saith, that he did not assume upon himself, in manner and form as the plaintiff against him hath declared, and of this he puts himself upon the country, and the plaintiff doth so likewise. And thereupon came a jury, to wit, James Fisher, William B. Graves, William Wright, Ludwell Carey, William M. Wash, John Rogers, William Stewart, James Eades, David Dodge, David Logan, William Hanson, and David Holstead, who being elected, tried, and sworn, well and truly to inquire of damages, upon their oaths returned the following verdict: "We of the jury find for the plaintiff the sum of $5,198 47 cents in damages." Therefore, it is considered by the court, that the plaintiff recover against the said defendant the damages aforesaid, in manner and form as aforesaid assessed, and also his costs by him herein expended; and the said defendant in mercy, &c.

And afterwards, to wit, on the 10th day of April, 1809, the following ca. sa. issued herein, to wit:

The Commonwealth of Kentucky to the sheriff of Fayette county, greeting:

You are hereby commanded to take Francis West, if he be found in your bailiwick, and him safely keep, so that you have his body before the Judges of our Fayette circuit court, at the court-house, in Lexington, on the 22d day of May next, to satisfy and pay George Anderson $4,000, which he lately, in our said court, recovered against him for damages, also $11 29, which, to the said George Anderson, in our said court, was adjudged for his costs by him about his suit in this behalf expended, whereof the said Francis West is convict, as appears to us of record, and have then there this writ. Witness Thomas Bodley, clerk of our said court, at the court-house aforesaid, this 10th day of April, 1809, and in the 17th year of the Commonwealth.

THO. BODLEY.

Upon which the sheriff made the following return, to wit: Not found within my bailiwick.

JOHN H. MORTON, *Sheriff.*

STATE OF KENTUCKY, FAYETTE COUNTY, sct.

I, Thomas Bodley, clerk of the court for the circuit aforesaid, do hereby certify that the foregoing seven and a half pages contain a full, true, and perfect transcript of the proceedings had in our said court, in the suit wherein George Anderson is plaintiff, and Francis West is defendant.

In testimony whereof, I have hereunto set my hand, this 22d day of May, 1818.

THO. BODLEY.

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PHILADELPHIA, *March* 28, 1809.

Doctor W. BRASHEAR:

DEAR DOCTOR: I am favored with yours of 15th and 26th February, both from Lexington, from neither of which does it appear that you had received either of mine dated in January. After I had settled with Peters, I found it necessary, and West strongly urged on me, to lay an attachment in my own hands, to prevent others taking from me that which you intended should be first applied to pay my claims on you. I have since, say early in the month, taken the common ginseng to my own account, at 40 cents per pound; some of it is now shipped, and the remainder will soon be weighed, when I will pass the amount to your credit. Mr. West says he comes in next after me, but until I have your instructions I shall hold on; but, indeed, you have been very remiss in informing me about your ginseng, and generally in answering my letters. I can do nothing with the clarified from New Orleans without orders from Hackley and Barr; it came as their property. I wrote to them I held it subject to their orders; therefore until they tell me it is yours, I must consider it as theirs, and be only accountable to them for the neat proceeds. I received the other day a parcel of upwards of 9,000 lbs. of ginseng, sent by Gibson to Guy Bryan here; he gave it up to me upon Gibson's information that it was yours, I paying him all expenses; it had been in his hands about six weeks: this I have also taken at 40 cents. You will be satisfied that I have allowed sufficient; at any rate we shall have no difference about it. No vessel has yet sailed for China. I put this, mine, into a small brig which I am concern , to sail in two or three days; perhaps one vessel only more may go, the times are so critical, and the insurance so high, say 25 per cent. out and home. I could have bought long ago ginseng at 30 or 33 cents, at twelve months' credit. Some of yours is good, and some intolerably bad; some of which I must reject, and at least 5 per cent. siftings. Mr. Allen has received your letter, to which you refer me in yours of the 15th; he has mislaid it, but told me he would hunt it up and show it me; I will see him in a day or two, and write you our determination. I confess, for my own part, I am only fearful of the quality; some, this year, of yours is very fine, others of it very ordinary. Why can it not be uniformly good? A friend of mine from Baltimore, who saw some of yours when I was starting it, says, some he has from Tennessee is worth 50 per cent. more. Even if your letter of the 26th had arrived in time, it would have been impossible to ship the ginseng on your account as you request; no person will take ginseng on freight. Dr. Heyland has sold his clarified at 50 cents, crude at 33, both sifted, and at long credit, and both of excellent quality. Your ginseng from New Orleans has not yet come on, nor have I heard a word about it. I am now confined to the house by a bad cold; when I get out I will write you more fully.

Yours truly,

J. LATIMER.

I write from the house and from memory, and suppose there is about 17,00 or 18,000 lbs. of crude ginseng. You will remember that the court is to decide in April whether I shall not also be obliged to pay the 10 per cent. allowed by the laws of Kentucky upon returned bills. Last accounts from China, ginseng 25. Dr. Picue.

J. L.

DR. *Mr. Walter Brashear in account with James Latimer.* CR.

1809.				
Jan. 17,	To cash paid carriage ginseng from Pittsburg - -	$77 59	By proceeds of a quantity of	
	cash - - - - - - -	53 82	ginseng, per sales -	$11,861 95
	cash, cost of suit Newman *vs.* Brashear, and same *vs.* Latimer - - - - - -	31 18		
	cash paid carriage of ginseng from Pittsburg -	57 92		
	my 2 notes of 5th January, 1809, 1 at 6 months, $3,672 78, 1 at 6 do. $1,938 06, being the amount of debt and interest, Newman *vs.* Brashear, and 6 months' interest thereon - -	5,610 84		
Feb. 2,	cash paid carriage of ginseng from Pittsburg $49 07			
8'	Do. do. do. do. 123 82			
		172 89		
Mar. 18,	Guy Bryan, on account of - $22 33			
	his charges on 36 *times* 130 00			
		353 33		
	cash paid freight 57 barrels received from New Orleans in August, 1808 - - -	119 70		
	cash paid damages on your bills, Newman *vs.* Brashear - - - - - -	369 45		
	balance - - - - - - -	4,985 23		
		$11,861 95		$11,861 95

E. Excepted.

PHILADELPHIA, 1*st August*, 1811.

JAMES LATIMER.

The foregoing is the copy of the account current referred to by James Latimer in his answer to interrogatories. Sworn to before me, October 5, 1822.

PETER LOHRA, *N. P.*

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Sales of ginseng for account of Mr. Walter Brashear.

Say 38 barrels 43 tierces, received from Mr. Gibson, of Pittsburg;
36 tierces, do. Guy Bryan, Philadelphia;
57 barrels, do. New Orleans;
most of it started and repacked.

March, 1809. JAMES LATIMER.

717 lbs.	clarified ginseng, at 50	-	-	-	$358 50
7,809 lbs.	crude and some clarified, at 40	-	-	-	1,952 40
3,159 lbs.	do. do. 40	-	-	-	1,263 60
3,657 lbs.	6,816 lbs. do. do. 40	-	-	-	1,462 80
					8,551 35
7,547 lbs.	clarified, in 57 barrels, at 50	-	-	-	2,873 50
					11,424 85
19 barrels	received in May, 1807, nett 1,497 lbs. at 30	-			449 10
					11,873 95
Charges—Porterage, storage, bringing out, weighing, &c.					12 00
				Nett proceeds	$11,861 95

Errors excepted.

PHILADELPHIA, *August*, 1811.
JAMES LATIMER.

The foregoing is the copy of account sales of ginseng referred to by James Latimer in his answers to interrogatories. Sworn to before me, October 5, 1822.

PETER LOHRA, *N. P.*

Copy of a note from Henry Nixon and Thomas M. Willing, executors of John Nixon, to James Latimer.

June 24, 1811.

DEAR SIR: Mr. Lewis informs us that you can now, with safety to yourself, pay unto the balance due to Mr. Brashear, and that executors of Mr. Nixon, by giving bond in the proper form, can receive the amount under the judgment; this facility, however, rests with you to give or not, as you feel authorized. We are, respectfully, yours,

HENRY NIXON,
THOMAS M. WILLING,
Executors of J. Nixon.

JAS. LATIMER, Esq., *Dock street.*

The foregoing is a copy of a document referred to by James Latimer in his answers to interrogatories. Sworn to before me, October 5, 1822.

PETER LOHRA, *Notary.*

BRASHEAR *vs.* LAPSELEY.—*Interrogatories.*

1st. Were you able to pay Walter Brashear the sum due on the ginseng account at the time the attachments were served on you by the parties defendants in this suit?

2d. Is the account as rendered by you to Francis West correct? and state the balance due Walter Brashear on that account.

3d. In what year did you make your assignment for the benefit of your creditors?

4th. In what was the ginseng attachments? and did or did not your circumstances materially change from severe adversity between the time of the attachments and your assignment?

5th. Have the parties who obtained judgment under that attachment ever to this day sued out an execution against you?

6th. Did the officer, when he attached the property, &c., require of you security for its forthcoming or not? if he did, assign the reasons, if any, why the security was not given.

BRASHEAR, *vs.* EXECUTORS OF JOHN NIXON. } *Interrogatories, on the part of the executors of John Nixon, to be proposed to James Latimer.*

1st. Was the attachment in either of the cases, to wit, that at the suit of the assignees of West, or that at the suit of the executors of John Nixon, laid upon any specific property, or was it generally upon whatever property might be in your hands?

2d. Did Dr. Brashear know that the said attachments had been laid soon after they were served, and how soon? and did he also know that they might be dissolved at any time by putting in special bail?

3d. Had you not been the special bail of Dr. Brashear in a suit wherein Thomas Newman was plaintiff? and had you not been compelled to pay the money, and to what amount? and were you or were you not remunerated therefor out of the proceeds of ginseng?

4th. Did or did you not inform Dr. Brashear that if special bail were entered the attachments would be thereby dissolved, and that, if they were so dissolved, you would pay him the money which would be found due to him on the settlement of the account?

5th. Did or did not the executors of John Nixon, after judgment was obtained on their attachment, give you notice, that, in the opinion of their counsel, you might safely pay the money into court? and did you not reply to it that you were advised otherwise by your counsel? and was this not in the month of June, 1811, and before your general assignment?

6th. Did you or did you not ship any part, and if any, part, of said ginseng to China? and, if yea, was it or was it not on your own account? and at what time was the result of said shipment known, and what was the result?

7th. Was or was not Dr. Brashear in the city of Philadelphia soon after the attachments were laid? and did he or did he not propose to raise them by entering special bail? and if he did so propose, what was the cause that prevented it being done?

8th. Was there or was there not any agreement, consent, or collusion between you and the executors of John Nixon, or the assignees of West, that the property or money attached should remain in your hands, should be shipped abroad, or should be used or disposed of in any way? or was there any consent on their part to any delay or procrastination of payment on your part? if there was, state it fully.

9th. Was the sheriff, when he laid these attachments, or at any time, authorized by law to demand of you, as garnishee, any security for the forth-

coming of the property, or the payment of the money into court? and was not every thing done by the sheriff in the service of the attachment which by law could be done, so far as your knowledge extends?

10th. Was or was not the account current, or one of similar import, attached to the account sales which you furnished hereto to Mr. Nixon or Mr. West, if you furnished any account to either of those gentlemen?

Deposition of a witness, produced, sworn, and examined, on Saturday, the 28th day of September, A. D. 1822, at the house of Peter Lohra, Esq., Mayor of the city of Philadelphia, by virtue of a writ of dedimus potestatum issuing out of the circuit court of the United States in and for the Kentucky district, in a cause therein depending between Walter Brashear, complainant, and John Lapseley and others, defendants.

James Latimer, of the city of Philadelphia, merchant, a witness produced, sworn, and examined, on the part and behalf of the complainant, Walter Brashear, deposeth and saith as follows, in answer to the interrogatories propounded on the part of the said Walter Brashear.

To the 1st interrogatory answered and saith: Up to the period, in August, 1811, when I made a general assignment, I met and paid my engagements. When the attachments referred to were laid, I was fully capable to pay all moneys due on the ginseng account, if any sum had been then due; but no moneys was then due to Walter Brashear on that account, because a part of the said ginseng was unsold, and the portion thereof sold was so sold upon a credit, which had not expired. The first moneys to come from the said sales were to be retained by me on account of about $5,000 paid by me as special bail of said Walter Brashear.

To the 2d interrogatory he answered and said: I have no copy of or accurate recollection of any account being delivered to Mr. West or Mr. Nixon, and that the balance due to Mr. Brashear on my books was $4,985 35 on the 1st day of August, 1811; statements have been delivered, but I have no particular recollection. I have annexed a copy of my account with Walter Brashear, as appearing on my books in August, 1811.

To the 3d interrogatory he answered and saith: I made a general assignment of all my property whatsoever, in trust for my creditors, on or about the 27th day of August, 1811, which is of record in the recorder's office for Philadelphia county.

To the 4th interrogatory he answered and said: An attachment was laid on the 7th day of April, 1809, by the sheriff of the city and county of Philadelphia, at the suit of the assignees of Francis West, on all goods, wares, and merchandise, rights, moneys, credits, and effects, belonging to Walter Brashear, in my hands, by leaving a copy of the said attachment with me after the attachment was laid; and similar attachment was laid on the same property at the suit of the executors of John Nixon, deceased: each of the writs were writs of foreign attachment. The second was served on me in 1809, after the first, but cannot recollect the particular time when. My circumstances did materially change by severe adversity between the time of serving those attachments and the date of my general assignment.

To the 5th interrogatory he answered and said: The executors of John Nixon have taken out a scire facias against me at their suit; it issued from the district court of the city and county of Philadelphia, returnable to September term, 1811, No. 54, and I made my general assignment before the return day of this scire facias. With respect to the attachment at the suit

of the assignees of Francis West, I do not know whether any farther proceedings were had in relation to it after it was served on me; if any, they are a matter of record. Subsequently to the execution of my general assignment in 1811, to wit, in 1812, I took the benefit of the insolvent law for the city and county of Philadelphia, and was duly discharged thereby. From the date of my general assignment, in 1811, up to this date, I have had no property which I considered liable to an execution for my contracted debts previous to my discharge under the said insolvent law. This law I consider as having discharged both my person and effects from all previous liability since the war; and I have paid off some debts voluntarily, debts which I consider particularly obligatory in point of honor. No creditor ever issued an execution against

To the 6th interrogatory he answered and said: When the sheriff laid the attachments in each of the instances before mentioned, he did not require of me any security for the forthcoming of the property; the reason I believe to be, because the attachment laws of Pennsylvania, in my opinion, do not require the sheriff to take such security; I have, in two other instances, been served with foreign attachments, when no such security was required. The directions *on* the courts of attachment, in these two last cases, were similar to those issued by the assignees of Francis West, and the executors of John Nixon.

JAMES LATIMER.
PETER LOHRA, *Notary.*

And the said witness having made and subscribed his answers as above set forth, the further proceedings herein were adjourned until the 5th day of October, A. D. 1822, then to be proceeded in at the same time.

And now, said last mentioned day, at the place aforesaid, the annexed interrogatories were propounded to the witness aforesaid, on behalf of the executors of John Nixon, deceased; but Samuel Shoemaker, Esq., on behalf of the said Walter Brashear, then and there excepted to and protested to the witness rendering any answer to the same; but the said exceptions were overruled by me, the said Peter Lohra: whereupon the said witness to the several interrogatories propounded on the part of the executors aforesaid, answered and said as follows:

To the 1st interrogatory he answered and said: The attachments were upon any specific property, but were generally upon whatever property of Dr. Brashear might be in my hands.

To the 2d interrogatory he answered and said: The attachment by Mr. West's assignees was served on the 7th of April, 1809, and on the same day I advised Dr. Brashear thereof by mail, but I presume he did not receive this letter before his departure for New Orleans, which a letter before, of 1st May, from Bardstown, Kentucky, he advised me was to take place on the following day; and this letter he did not acknowledge receipt of mine of 7th April, but directs me to pay the balance that may remain by the ginseng sales among certain creditors of his in Philadelphia, pro rata. In a letter of the 1st of November, 1809, from Bardstown, he informed me, that, on his return from Louisville, he was advised of the attachment by Mr. West's assignees, and requested me to settle with Mr. West or his assignees; that he wishes the attachment closed with as little expense as possible; but this could not be done, as I had been previous served with an attachment by the executors of Mr. Nixon, which, by an examination of

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the records, I find was issued on the 7th of October, 1809. I do not know whether Dr. Brashear was informed or knew that the attachments might be dissolved by his entering special bail.

To the 3d interrogatory he answered and said: I had been the special bail of Dr. Brashear in a suit wherein Thomas Newman was plaintiff, and had been obliged to pay money, say amount of debt $5,444 78, interest $166 06, including interest 6 months, having paid by my note at 6 months, with interest, with $369 45, damages on the bills $604 47, and was remunerated therefor out of the proceeds.

To the 4th interrogatory he answered and said: I do not remember, and cannot say, whether I did or not inform Dr. Brashear if special bail were entered the attachments would be thereby dissolved, I would pay to him the money which should be found due him on the settlement of the account.

To the 5th interrogatory he answered and said: The executors of Mr. Nixon, after judgment was obtained on the attachment, did notify me that, in the opinion of their counsel, I might safely pay the money into court, but my counsel thought differently; this was in June, 1811, and before my general assignment.

To the 6th interrogatory he answered and said: I did ship part of the ginseng on my own account in March, 1809, by brig Growler, for China, before the attachments by Mr. West's assignees or Nixon's executors were laid; and in May, 1809, shipped of the ginseng per ship Delaware, to China, on the joint account of myself and Mr. William Redwood. The results of these shipments were known in the spring of 1810: the former resulted in some profit, the latter in some loss; the profits on the one and the loss on the other nearly balance.

To the 7th interrogatory he answered and said: That Dr. Brashear was not in Philadelphia for a long time after the attachments were laid: I think not before the early part of 1811. I do not remember or know that he proposed to raise the attachments by entering special bail, nor do I remember or know what was the cause that prevented it being so done.

To the 8th interrogatory he answered and said: There was not any collusion, agreement, or consent between the executors of Mr. Nixon or the assignees of Mr. West and myself, that the property or money attached should remain in my hands, should be shipped abroad, or used or disposed of in any way, other than the consent of the assignees of Mr. West that the ginseng might be sold; which consent was after their attachment, and before that by Mr. Nixon's executors; nor was there any consent on the part of the said assignees or executors to any delay or procrastination of payment on my part. I had taken to my own account, before the attachments were laid, a considerable part of ginseng, say near two at least, at the fair market price, and advised Dr. Brashear thereof by letter, dated the 26th of March, 1809, copy of which is annexed; I had, therefore, a right to ship it without the consent of either the assignees or executors.

To the 9th interrogatory he answered and said: The sheriff, when he served the attachment, or at any time, was not authorized by law, as I believe, to demand from me, as garnishee, any security for the forthcoming of the property, or the payment of the money into court; and every thing was done by the sheriff, in the service of the attachment, which, by law, could be done, as far as my knowledge extends.

To the 10th interrogatory he answered and said: I do not remember whether the account current, or one of similar import, was attached to the account of sales which was furnished, as I believe, to Mr. Nixon.

JAMES LATIMER.

The foregoing depositions were duly taken and sworn to at the times and place therein stated, which I attest under my notarial form and seal.

PETER LOHRA, *N. P.* [L. S.]

To the honorable the Judges of the circuit court of the United States in and for the Kentucky district:

I, Peter Lohra, a notary public of the city of Philadelphia, by lawful authority, duly commissioned and sworn, do hereby certify that the execution of this writ appears in the schedule of answers and papers hereto annexed; that I did, by virtue of the said writ, cause James Latimer, the witness therein named, to appear before me at such certain days and place appointed by me, and that Charles Chauncey, Esq. then and there appeared on behalf of the executors of John Nixon, deceased, in consequence of the notice having been given to the said executors of the time and place of taking the deposition of the said witness. I do further certify that proper proof was made before me that due and legal notice was given to John Lapseley, Samuel Mifflin, and Henry Nixon, of the time and place of taking the deposition aforesaid, as assignees of Francis West, and that they declined attending before me. In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the 5th day of October, 1822.

PETER LOHRA, *N. P.* [L. S.]

The deposition of Thomas Anderson, of lawful age, taken at the office of William MacBean, in Lexington, on Saturday, the 23d day of March, 1822, between the hours of ten and one o'clock, agreeable to notice, to be read in evidence in a suit in chancery now depending in the seventh circuit court of the United States' *circuit court*, wherein Walter Brashear is complainant, and Francis West and others are defendants.

Question by complainant. What was the amount paid by Walter Brashear to your father, to yourself, and the heir of your father, George Anderson, deceased, on account of a claim of your father against Francis West, of Philadelphia?

Answer. He received five thousand and one dollars and sixty-two cents, principal and interest, up to the 1st of March, 1822.

Question by complainant. In what manner did I become indebted to your father, George Anderson, for the above amount?

Answer. I have understood it to be as security for a claim my father had against Francis West, of Philadelphia. And further this deponent saith not.

THOS. ANDERSON.

The deposition of William MacBean, of lawful age, taken at the same time and place.

Question by complainant. In whose handwriting is the annexed account current and account of sales, dated the 31st March, 1809, headed Dr. Walter Brashear in account with James Latimer, on which appears to be a balance of four thousand and twenty dollars and eighty cents, exclusive of interest, due to Walter Brashear?

Answer. In the handwriting of Francis West, of Philadelphia. I have seen him write, and am well acquainted with his handwriting.

Question by complainant. Do you or do you not know the signature of the two following notes to be the handwriting of Francis West, of Philadelpia, one dated 19th March, 1807, at three months after date, payable to Walter Brashear, $1,887 65; the other of same day and year, at four months, for $1,887 65?

Answer. I have no doubt they are both of the handwriting of Francis West. And further this deponent saith not. W. MACBEAN.

The deposition of John Fowler, of lawful age, taken at the same time a place.

Question by complainant. Are you acquainted with the handwriting of Francis West, of Philadelphia? and is the annexed account current and account of sales, dated 31st March, 1809, in his handwriting, marked No. 2?

Answer. I have corresponded with Mr. West for many years, and consider myself well acquainted with his handwriting; I have no doubt the annexed No. 2 account is stated in his own handwriting.

Question by complainant. Are the signatures to the two notes annexed in the handwriting of Francis West?

Answer. I have no doubt they are. And further this deponent saith not. JOHN FOWLER.

FAYETTE COUNTY, sct.

The foregoing depositions of Thomas Anderson, William MacBean, and John Fowler, was this day taken, subscribed, and sworn to, before me, a justice of the peace in and for the county aforesaid. Given under my hand, this 23d day of March. MATH. ELDER, *J. P. F. C.*

Sales of ginseng on account of Mr. Walter Brashear.

1809.

March 31. James Latimer, 6 months' credit.

Received in barrels and tierces, and weighed, - - -			Nt.	7,809
Do.	do.	- -	"	4,881
Do.	do.	- -	"	6,817
57 bbls. - - - -			"	5,747
			Nt.	25,253 lbs. at 40 cts. 10,101 20
777 lbs. clarified ginseng, at 50 cts.				358 50
				$10,459 70
Charges:				
Porterage, storage, turning out, and weighing				7 50
Weighing, 2 cts. per cwt. - - -				4 50 — 12 00
			Nett proceeds,	$10,447 70

Three months after date, I promise to pay to the order of Walter Brashear eighteen hundred and eighty-seven dollars sixty-five cents, without defalcation, for value received. Philadelphia, 9th March, 1807.

$1,887 65. FRAN. WEST.

Four months after date, I promise to pay to the order of Walter Brashear eighteen hundred and eighty seven dollars sixty-five cents, without defalcation, for value received. Philadelphia, 9th March, 1807.

$1,887 65. FRAN. WEST.

DR. *Walter Brashear in account with James Latimer.* CR.

1809.					
Jan. 17	To cash paid carriage of ginseng from Pittsburg -		$77 59	By 19 bbls. ginseng, 1,497 lbs.	
21	Paid costs of suit - - - - -		31 18	nett, 30 cts. - -	$449 10
	Paid carriage of ginseng from Pittsburg - -		53 82	By proceeds of sales of gin-	
31	Paid do. do. - - -		87 92	seng annexed - -	10,447 70
	My note 5th January, 1809, six months	3,672 78			
	Do. six do.	1,938 06			
			5,610 84		
Feb. 2	To cash paid carriage of ginseng - - -		49 07		
	Do. do. - - - -		123 82		
Mar. 18	Paid Guy Bryan, account ginseng - - -		223 33		
Apr. 13	Do. do. do. - - - -		130 00		
May 6	Damage on your bills - - - - -		369 45		
	Freight of 57 barrels of ginseng from New Orleans -		119 70		
	[Exclusive of interest.]		$6,876 72		$10,896 80

The following is the appeal bond herein, to wit:

Know all men by these presents, that we, Francis West and Henry Nixon, surviving executors, with Thomas M. Willing, who were executors of Henry Nixon, and Robert Wickliffe, are held and firmly bound unto Walter Brashear in the sum of five hundred dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated this 24th day of December, 1828. The condition of the above obligation is such, that whereas the above bound Francis West and Henry Nixon, surviving executors, with Thomas M. Willing, who were executors of Henry Nixon, have prayed for and obtained an appeal from the seventh circuit court of the United States in and for the Kentucky district, to the Supreme Court of the United States, in a certain suit in chancery, wherein said Walter Brashear was complainant, and said West and Nixon were defendants: now if the said Francis West and Henry Nixon shall well and truly prosecute the said appeal with effect, or, on failure thereof, pay to the said Brashear all costs that he may incur in the defence thereof, and also pay all such costs as the said West and Nixon may legally incur, of every kind, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.]
[SEAL.]
R. WICKLIFFE. [SEAL.]

Witness: A. W. G. NICHOLS, *D. C.*

UNITED STATES OF AMERICA, *7th circuit, Kentucky district, set.*

I, John H. Hanna, clerk of the seventh circuit court of the United States of America in and for the Kentucky district, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings had in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 21st day of January, A. D. 1829, and in the 53d year of the independence of the United States.

JNO. H. HANNA. [L. S.]

IN THE SUPREME COURT OF THE UNITED STATES.

In the case of WALTER BRASHEAR, appellee, *at the suit of* FRANCIS WEST and NIXON, appellants. } *From the seventh circuit and Kentucky district.*

The counsel for the appellee suggests to the court that there is a diminution in the transcript of the record as certified into this court from the circuit court, in this, that no decree appears in the transcript, whereas, in truth and in fact, there is a decree in said case, which decree is enrolled in said circuit court. A certiorari is therefore asked, directed, &c., commanding, &c.

BIBB, *for W. Brashear.*

No. 97.—UNITED STATES OF AMERICA, ss.

The President of the United States of America to the honorable the Judges of the circuit court of the United States for the district of Kentucky, greeting:

Whereas in a certain suit in the said circuit court, wherein Walter Brashear was complainant, and Francis West and others were defendants, which

suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit, "that there is no decree in the said transcript, whereas, in truth and in fact, there was a decree, which is enrolled in the said circuit court in and for the seventh circuit, and Kentucky district;" you, therefore, are hereby commanded, that, searching the record and proceedings in said cause, you forthwith certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court on the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-one. Witness the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord 1830.

WM. THOS. CARROLL, [L. S.]
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *7th circuit court, Kentucky district, set.*

May term, June 10, 1825.

WALTER BRASHEAR, complainant,
against
FRANCIS WEST and JOHN LAPSELEY, SAMUEL MIFFLIN and HENRY NIXON, trustees of said West, and THOMAS M. WILLING and HENRY NIXON, executors of John Nixon, deceased, defendants. } *In chancery.*

It is the opinion of the court that the complainant is, in equity, entitled to a credit or set off against the judgments at law obtained against him, in the name of West, for the sum of four thousand and eleven dollars sixty-eight cents, being the amount of the judgment obtained against the complainant as special bail for West, by George Anderson, but that the complainant is not entitled to any of the other credits or set offs claimed in his bill and amended bill. It is therefore decreed and ordered, that the said four thousand and eleven dollars and sixty-eight cents, or so much thereof as will extinguish the same, shall be and is hereby credited and set off as payment on the 22d of October, 1810, against the judgment at law, not against or not covered by the injunction bond; and that the residue of said four thousand and eleven dollars and sixty-eight cents, if any, and the costs of the complainant in this suit, shall be and is hereby credited and set off against so much of the other judgment at law, the costs to be credited as of this day; and the clerk is hereby directed to tax the costs of this suit, and make the necessary calculations, and enter the said credits accordingly. And it is further decreed and ordered, that, as to the residue of the said judgments or judgment, as the case may be, after entering and giving the credits as aforesaid, the complainants' injunction shall be and the same is hereby dissolved, with ten per centum damages upon the amount of such residue at the time the injunction was granted, and that the complainants may proceed to recover, by execution at law, the said residue, and also the damages aforesaid.

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UNITED STATES OF AMERICA, *7th circuit court, Kentucky district, set.*

I, John H. Hanna, clerk of the seventh circuit court of the United States of America in and for the Kentucky district, do hereby certify that the foregoing decree is truly copied from the record in the case aforesaid, and that the same was omitted in the transcript of the record and proceedings of the case made out for the Supreme Court.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this seventh day of June, in the year one thousand eight hundred and thirty, and in the fifty-fourth year of our independence.

JNO. H. HANNA. [L. S.]

No. 31.—SUPREME COURT OF THE UNITED STATES.

January term, 1831.

FRANCIS WEST and HENRY NIXON, appellants, *vs.* WALTER BRASHEAR. } *On appeal from the circuit court U. S. for the district of Kentucky.*

Mr. Peters, of counsel for the appellants in this cause, suggests to the court here a diminution of the record in this cause, in this, that, in the trial of this cause below, there was a bill of *review* and proceedings on said bill to a decree, wherefore he prays a certiorari, &c. February 22d, 1831.

RICH. PETERS.